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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Case No. 11-40345-tmb7
)
Jens Peter Soballe,) Portland, Oregon
) September 8, 2016
Debtor.)
) Final Hearing on Motion
) For Contempt
_____)

TRANSCRIPT OF PROCEEDINGS

Before the Honorable Trish M. Brown
United States Bankruptcy Judge

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September 8, 2016

9:05:30 a.m.

(Judge Brown)

P R O C E E D I N G S

THE COURT: Good morning.

MR. FULLER: Good morning.

THE COURT: This is the time set for a final hearing on a motion for contempt as to Portland State University, except for the issue today is, we're not going to decide the contempt, it's only whether or not it's a student loan.

But what I would like you to consider, and if we need to take a break after we have your evidence so that you can think about this, I would like you to consider putting on whatever evidence you can with the live evidence on the contempt issue today. And then I know I'm not deciding that issue, but then -- and I'm not indicating one way or the other how I'm going to rule -- but that way, then you can supplement with affidavits and we don't have to have yet another trial, should that be necessary.

So, I'm certainly willing to, you know, take a break and have you -- not right now, but does that make sense to everyone? I really do not want to have two evidentiary hearings if that is necessary.

1 MS. SINNOTT: Your Honor, I see that Mr. Soballe
2 is not in the courtroom.

3 MR. FULLER: He's on 3rd and Alder.

4 MS. SINNOTT: Oh, okay. So, I guess my concern
5 would be if he was not here, we wouldn't be able to ask
6 him questions about what his damages have been.

7 THE COURT: Well, he's -- he's coming though,
8 right?

9 MR. FULLER: Absolutely, Your Honor.

10 THE COURT: Okay.

11 MS. SINNOTT: One concern I have about that is
12 when we -- when I deposed Mr. Soballe, I was going to ask
13 questions about his damages, and Mr. Fuller -- Fuller
14 objected to that line of questioning because this hearing
15 was limited to the dischargeability. So I have not had an
16 opportunity to question him about that.

17 THE COURT: Okay, well never mind then. I was
18 trying to -- trying to, you know, make things so that, to
19 the extent we could -- and really, you shouldn't have
20 objected. It's all one -- you have a motion for contempt,
21 she should have been able to ask whatever questions she
22 wanted to ask.

23 MR. FULLER: I agree, Your Honor.

24 THE COURT: Next time, do not do that.

25 MR. FULLER: I will not. It was only in an

1 effort to reduce costs, and we did not get into their
2 knowledge of the discharge order, which would have taken a
3 lot more expense and time during depositions and
4 discovery.

5 THE COURT: Okay.

6 MS. SINNOTT: I think that we've admitted that
7 PSU knew about the discharge order.

8 THE COURT: Right.

9 MS. SINNOTT: That's not an issue for us.

10 THE COURT: Okay. All right. So then I have
11 some other preliminary issues.

12 This is for PSU. In the initial letter, the
13 school claimed that the debt was nondischargeable under
14 section 523(a)(8)(B). But in your trial brief, you argue
15 nondischargeability under 523(a)(8)(A)(i). So I want you
16 to clarify if you've abandoned the 523(a)(8)(B).

17 MS. SINNOTT: We are, for this proceeding,
18 operating under the understanding that the discharge --
19 nondischargeability provision was (a)(8)(A)(i).

20 THE COURT: (i), okay. All right.

21 And for you, you have suggested that there were
22 different versions of the contract.

23 If you intend to pursue that argument during
24 this hearing, please focus on quickly summarizing any
25 substantive differences between the various versions. The

1 alleged contract isn't governed by the statute of frauds,
2 and the Court hasn't been able to find any requirement for
3 one integrated written document.

4 The fact that PSU -- PSU has two slightly
5 different versions does not appear to be particularly
6 relevant unless the material terms are different.

7 And so, just letting you know, I looked at them,
8 I couldn't see any material differences. But that's not
9 to say I didn't miss it. All right?

10 So, and generally, Mr. Soballe's alleged consent
11 to the Revolving Charge Account Agreement, PSU has stated
12 that Mr. Soballe affirmatively consented to the agreement
13 in October 2009, in March and July of 2010. And I hope
14 that you can provide detailed evidence backing up those
15 allegations.

16 And if PSU provides such evidence, then the
17 Debtor needs to explain why such consent was not
18 sufficient to make the agreement applicable to the tuition
19 incurred for the fall 2010 semester.

20 And finally, labels used by the parties to the
21 contract are not dispositive of what constitutes a
22 nondischargeable debt.

23 Accordingly, even if PSU can prove the Debtor
24 assented to the agreement, it still must prove that the
25 debt at issue is a student loan for purposes of section

1 523(a)(8) .

2 At the same time, the terms of the contract are
3 informative, although not conclusive, and nothing in the
4 contract purports to weigh the Debtor's ability to argue
5 that the debt is dischargeable. In fact, that's why we're
6 here today.

7 So, if there is an enforceable contract, I'm not
8 inclined to hold that it has an invalid pre-petition
9 bankruptcy waiver. All right?

10 So -- just so people are sort of clear about
11 where I am.

12 So, with that said, do the parties want to do
13 opening?

14 MR. FULLER: We have just two preliminary
15 matters, Your Honor.

16 THE COURT: Okay, and what are we going to do --
17 where is your client?

18 MR. FULLER: He is stuck in traffic, and I
19 assure you he will be here by the time he is called.

20 THE COURT: Okay.

21 MR. FULLER: And I apologize for his tardiness.

22 First, we'd like to stipulate as to authenticity
23 as to all the documents, except for the two versions of
24 the agreement, and -- and PSU Exhibits C, D and E.

25 THE COURT: So A, B, F through M can be

1 admitted?

2 MR. JONES: Well, A is -- Your Honor, A is the
3 one version --

4 THE COURT: Well, I just was listening to him.
5 So he said C, D and E.

6 MR. JONES: Yeah, C, D and E.

7 MR. FULLER: So with the -- also with the
8 exclusion of PSU Exhibit A, which is Debtor Exhibit 1.
9 And then Debtor Exhibit 16, which I hope --

10 THE COURT: Well, can we -- go back. What ones
11 of theirs do you agree can come in?

12 (Pause)

13 THE COURT: While he's doing that, do you --
14 have you seen his exhibits?

15 MS. SINNOTT: I have seen them, and I don't have
16 any objections to their authenticity.

17 THE COURT: So it looks like he has 1, 2, 3, no
18 4, -- 5, and 16?

19 MR. FULLER: And we would not object to Exhibits
20 -- I'll just tell you the ones that we do object to of
21 Portland State. A, C, D and E.

22 THE COURT: So B, F, G, H, I, J, K, L, M are
23 admitted.

24 (Creditor PSU's exhibits B, F, G, H, I, J, K, L
25 and M were then received into evidence)

1 THE COURT: And you have, what?

2 MR. JONES: He's got three outside of the
3 binder.

4 THE COURT: I see. You have 1, 2, 3, 5, 16, 26,
5 27 and 28.

6 MR. FULLER: Correct, Your Honor.

7 THE COURT: That's kind of a bizarre numbering
8 system.

9 MR. FULLER: I know, we just used the numbers
10 that we had used at the deposition for --

11 THE COURT: Okay.

12 MR. FULLER: Sorry.

13 THE COURT: And you have no objection to those.

14 MS. SINNOTT: I have no objection to the
15 authenticity of those documents.

16 THE COURT: Okay. You -- you can object to
17 relevance or whatever.

18 (Debtor's exhibits 1, 2, 3, 5, 16, 26, 27 and 28
19 were then received into evidence)

20 MS. SINNOTT: Yes.

21 THE COURT: Right. Right.

22 MR. FULLER: And, Your Honor, we had stipulated,
23 may it please the Court, that Portland State will call its
24 witnesses first. We will be allowed to cross-examine them
25 as -- as if on direct, so the witnesses can be excused, so

1 we don't have to recall them in our case.

2 THE COURT: That's fine.

3 MR. FULLER: And we are going to object to the
4 testimony of this witness, Ms. Powell. We can do that
5 now, or however Your Honor prefers, but prior to her
6 testimony.

7 MS. SINNOTT: I'd rather just address that now -
8 -

9 THE COURT: That's fine.

10 MS. SINNOTT: -- if you don't mind.

11 THE COURT: Who -- who is it, and what's the --

12 MS. SINNOTT: Your Honor -- Your Honor, Ms.
13 Powell is the IT person from Portland State who we intend
14 to call to authenticate the electronic agree -- to Mr.
15 Soballe's electronic acceptance of the terms and
16 conditions of the Revolving Credit Account Agreement. And
17 that's -- I guess I'll let Mr. Fuller argue as to why he
18 objects to her testimony, and respond.

19 MR. FULLER: Your Honor, we served request for
20 production marked as Exhibit 29, and the first six
21 requests were for documents identifying the witnesses who
22 might have personal knowledge or who might testify today.
23 And Portland State's response was that they had produced
24 documents that identify those potential witnesses.

25 During the deposition, the first 30(b)(6)

1 deposition, we asked specifically if these requests were
2 reviewed, and we were told they were.

3 Throughout the first deposition and the
4 continued 30(b)(6) deposition of Ms. Looney, we asked for
5 the witnesses that might have knowledge about the
6 authentication of these agreements, because it's so
7 important to our case, and we were told that there was no
8 one else.

9 The first time we ever saw Ms. Powell's name was
10 when the witness list was filed. We know nothing about
11 her or her testimony. And we would ask her to be
12 excluded, because we were very clear, and I can point you
13 to the parts of the transcript where we wanted to know
14 everyone who was going to be here so we could ask them
15 about the authentication and the assent issues. And we
16 were never -- you know, these were ongoing -- these stated
17 they were ongoing, and we never got anything, a phone call
18 or an email or anything, so that we could have deposed
19 them before today.

20 MS. SINNOTT: Your Honor, we produced witnesses
21 for the 30(b)(6) depositions, and in good faith we
22 produced who we thought the Debtor's counsel needed to
23 depose.

24 During the course of discovery, and very
25 recently, it has come to our attention through arguments

1 from counsel that Mr. Soballe never agreed to this RCAP.
2 We didn't know that that was going to be an issue in this
3 case. He -- in the motion for contempt, he specifically
4 said, "This is my agreement with PSU." He attached it to
5 his declaration. We proceed -- we produced that agreement
6 in discovery. We produced the witness who produced -- who
7 provided that agreement to Mr. Soballe.

8 It only came out during the course of this
9 proceeding that Mr. Soballe was now claiming, "Oh, I -- I
10 never signed that."

11 So PSU would now be prejudiced if it could not
12 call a witness to authenticate that he did actually sign -
13 - or agree to this RCAP through his online student
14 account. And I don't know what prejudice Mr. Soballe
15 would suffer if we couldn't -- if we did put this witness
16 on.

17 MR. FULLER: This could --

18 MS. SINNOTT: Also -- I actually want to note
19 one more thing.

20 So, the last deposition was I believe August
21 29th. No, August 18th.

22 During -- at the end of that deposition, Mr.
23 Jones said, "I want to keep this deposition open again."
24 We had already provided two witnesses to answer their
25 questions. We said, "You know, if you -- we're not going

1 to agree to that. If you want to have another 30(b)(6)
2 deposition, you can take it up with the Court." They
3 never filed a motion to compel, they never contacted the
4 Court, we never had a conference about it. Just now
5 they're -- they're arguing that we shouldn't be able to
6 present this witness. I don't think that they preserved
7 their ability to argue that at this point.

8 MR. FULLER: One thing, Your Honor. We had an
9 initial deposition of both parties. At that deposition,
10 Mr. Soballe said in no uncertain terms that he didn't
11 recall ever seeing that agreement before it was emailed to
12 him in 2013. They were aware of that fact at that point.
13 We did a follow-up deposition, and if you would turn to
14 page 141 of Ms. Looney's deposition transcript, and I'll
15 just let Your Honor read from lines 7 to 14, and we'd rest
16 on that argument. If the witness is able to testify, we'd
17 ask that this Court consider the weight given to her
18 testimony, considering we specifically asked if anyone
19 would have more information about the authentication of
20 these documents, and they said they didn't know.

21 MS. SINNOTT: Your Honor, Ms. Looney is from
22 Student Financial Services. During the first deposition
23 of Nicolle DuPont, who is from the Registrar's Office, who
24 was the witness that we put on to describe why Mr. Soballe
25 could have dropped his classes even though he claims he

1 couldn't, because that's what we thought the issue was in
2 the beginning.

3 During that deposition, Mr. Jones went through
4 excruciating detail in the account statement, which is
5 Exhibit -- I believe it's our last exhibit. But it's --
6 it's a very dense document that has a bunch of entries
7 about credits and debits, and what are these codes, and
8 what have you. And that seemed to be the -- the issue
9 that Debtor's counsel really wanted to get at. So we
10 produced Ms. Looney, who knows the specifics about that.

11 And then only later did it come out that Mr.
12 Soballe's saying he never agreed to this agreement. So
13 now we need to find an IT person to show that when he
14 clicked the box, we could prove that he agreed.

15 THE COURT: Okay, hang on a second.

16 (Pause)

17 THE COURT: Well, your motion for contempt says
18 he registered for 2010 fall classes.

19 MR. FULLER: And he did, Your Honor.

20 What the evidence is going to show is that he
21 was unaware of any agreement between him and Portland
22 State, and when he asked for it, they emailed him an
23 agreement in 2013. But he doesn't ever recall having seen
24 it.

25 THE COURT: Oh, okay. I'm going to allow the

1 testimony.

2 MR. FULLER: Okay.

3 MS. SINNOTT: Thank you.

4 THE COURT: You -- you said he registered for
5 classes. What he knew or didn't know, that's another
6 thing altogether. But he registered for classes. And
7 what did he do when he did that? And I'm going to allow
8 the testimony.

9 And whether or not you could take a deposition
10 of the per -- the IT person really, I'm not going to find
11 that there would be much information in a deposition of
12 the IT person. So --

13 MR. FULLER: Yes, Judge.

14 THE COURT: -- all right? So, okay. So now do
15 you want to do opening or not?

16 MS. SINNOTT: Your Honor, I would like to do a
17 short opening, if you don't mind.

18 THE COURT: Okay. Well, it's his motion, so he
19 should go first, if you want to do opening.

20 MR. FULLER: Go first.

21 MS. SINNOTT: I think they wanted me to go first
22 for --

23 MR. FULLER: The parties seem to agree that
24 Portland State had the burden, and so if we want to --

25 THE COURT: Whatever. Fine.

1 MR. FULLER: Okay.

2 MS. SINNOTT: Okay. Thank you, Your Honor.

3

4 **CREDITOR PSU'S OPENING STATEMENT**

5 MS. SINNOTT: Your Honor, from my trial brief,
6 what I see here is that there are three issues for trial.
7 And I want to just kind of outline what the evidence is
8 going to show for those three issues.

9 So the first --

10 THE COURT: Hang on a minute.

11 MS. SINNOTT: I'm sorry.

12 THE COURT: Can you -- maybe you should remain
13 seated and --

14 THE CLERK: Move the microphone.

15 THE COURT: -- pull the microphone in.

16 MS. SINNOTT: Okay. Sorry. Is that better?

17 THE COURT: Way better.

18 MS. SINNOTT: Oh, wow. Okay, so, as I was
19 saying, there are three issues for trial here.

20 The first one, as I see it, is whether Debtor
21 owed anything to PSU.

22 Debtor alleges that he was not able to drop his
23 classes due to an online hold. And the only fact that
24 this could be relative to is whether he owes anything to
25 PSU. If he wasn't allowed to drop, and he should have

1 been allowed to drop. And I guess what he's arguing is
2 that he doesn't owe anything.

3 But the evidence will show -- well, first of
4 all, he already admitted that he owed an obligation. His
5 motion for contempt admits that he owes a debt. His
6 schedules admit that he owes a debt. So, we think that
7 alone shows that he owes the debt. Or at least did at the
8 time of his bankruptcy petition.

9 But additionally, the evidence will show that
10 Debtor's hold was not placed until October 20th, 2010.
11 That was well after the drop deadline. If Debtor was in
12 Haiti, as he says in his motion, until October 24th, then
13 he wouldn't have been able to drop before the deadline
14 anyway.

15 The second thing is the evidence will show that
16 Debtor -- if Debtor was having trouble dropping online, if
17 there was in fact a hold on his account before the
18 semester began and before the drop deadlines expired, he
19 could have easily gone to the Registrar's Office, he could
20 have called, he could have emailed, and he could have
21 dropped his classes. The online hold does not preclude a
22 student from dropping their classes. It just precludes a
23 student from dropping their classes online.

24 The evidence will show that Debtor did none of
25 those things.

1 The evidence will also show that Debtor could
2 have retroactively obtained a refund of these amounts, up
3 to a year later, by filing two separate petitions. The
4 evidence will show that Debtor did none of those things.

5 So we think the evidence will show that Debtor
6 did owe PSU for this unpaid tuition.

7 The second issue is whether the obligation is
8 governed by the RCAP. And that's the Revolving Credit
9 Account Agreement. The "P" is for policy, the -- it's
10 Revolving Credit Account Agreement Policy.

11 The Debtor alleges, although he did sign a
12 declaration attaching the RCAP as an exhibit, claiming
13 that that was his agreement with PSU at the beginning of
14 this proceeding, he now alleges that he does not remember
15 agreeing to this RCAP.

16 However, the evidence will show that Debtor
17 agreed to the RCAP on numerous occasions, beginning as
18 early as 2005.

19 In 2010, before he registered -- before he was
20 permitted to register for his classes for fall 2010, he
21 was required to "click the box" of the terms and
22 conditions which had the RCAP as a hyperlink. He was not
23 permitted to register without doing that.

24 Debtor was also required to accept -- the
25 evidence will show that Debtor was also required to accept

1 the RCAP before doing such things as changing his online
2 password. The evidence will show he changed his online
3 password on July 22nd before he registered for classes.

4 Debtor also cannot offer evidence -- any
5 evidence that he did not register for RCAP.

6 The evidence will show that when I asked Debtor
7 during his deposition whether it was possible that he had
8 agreed to the RCAP, he said it was possible.

9 The third issue, and this is the issue that I
10 think is really the meat of this proceeding, is whether
11 the RCAP is an educational loan under 523(a)(8)(A)(i).
12 The Debtor alleges that the RCAP is not an educational
13 loan, because he never attended classes, and therefore
14 never received a benefit.

15 However, the evidence will show, first, PSU is a
16 government unit. That's one of the prerequisites for
17 meeting the requirements of 523(a)(8)(A)(i).

18 The evidence will also show the RCAP is a loan.
19 It has deferred payments, it's an extension of credit,
20 there are due dates, there are interest charges for past
21 due payments, the Debtor would incur late fees by not
22 paying on time, and collection fees.

23 In sum, Your Honor, the evidence will show these
24 three issues in favor of PSU.

25 THE COURT: All right.

1 MR. JONES: Your Honor, just a short opening for
2 Debtor. Permission to stay seated.

3 THE COURT: Permission granted.
4

5 **DEBTOR'S OPENING STATEMENT**

6 MR. JONES: So, as Debtor sees this, the -- the
7 -- really the only issue here is whether this deferred
8 tuition debt was dischargeable or nondischargeable under
9 523(a)(8).

10 In order for it to be so, it must be considered
11 a loan.

12 In the Ninth Circuit, the definition of "loan"
13 has been extended to include certain tuition debts that
14 are governed by a valid agreement that sets forth the
15 terms and conditions of the repayment, and including a
16 date certain for repayment, and (3) whether there's an
17 actual benefit received by the Debtor resulting in the
18 debt.

19 So the two sub-issues here to determine whether
20 this was a loan is, again, is there a valid and
21 enforceable agreement pertaining to the 2000 tuition
22 debt, and did Mr. Soballe receive an actual benefit from
23 that tuition debt?

24 THE COURT: Okay.

25 MR. JONES: And I guess one more thing.

1 In -- in terms of arguing whether a debt was
2 actually owed, Debtor concedes that there is a debt owed
3 here. We're -- we're not setting forth that there was
4 not a debt owed, just whether that debt is a loan under
5 523(a)(8).

6 THE COURT: Okay.

7 MR. JONES: And we also concede that they're --
8 PSU is a governmental unit, for whatever that's worth.

9 THE COURT: Okay. Was that not in your
10 stipulated facts? Things like that should have been
11 there.

12 MS. SINNOTT: It should have been.

13 MR. JONES: It should have been.

14 MR. FULLER: Ms. Sinnott forgot it.

15 MS. SINNOTT: That's my bad.

16 THE COURT: Okay. Not casting blame, just
17 saying that probably should have been in the stipulated
18 facts. Okay. Call your first witness.

19 MS. SINNOTT: Thank you. Your Honor, I'd like
20 to call Shari Powell.

21 THE COURT: All right.

22 MS. SINNOTT: And, Your Honor, I have a visual
23 aid I'm not intending to admit as an exhibit, and I've
24 given it to Debtor's counsel. Do you mind, may I
25 approach?

1 THE COURT: You may. Thank you.

2

3 **SHARI POWELL**

4 called as a witness by the Creditor PSU, having being
5 first duly sworn, was examined and testified as follows:

6 THE COURT: Please state your full name and
7 spell your last name for the record.

8 THE WITNESS: Shari Powell, P-o-w-e-l-l.

9 THE COURT: All right. Okay, thank you, you
10 may be seated.

11 **DIRECT EXAMINATION**

12 BY MS. SINNOTT:

13 Q Good morning, Ms. Powell.

14 A Good morning.

15 Q Ms. Powell, where do you work?

16 A Portland State University.

17 Q And what is your title at Portland State
18 University?

19 A I'm the Associate Director of ERP in the
20 Information Solutions Team.

21 Q And what does ERP stand for?

22 A Enterprise Resource Planning.

23 Q What are your responsibilities as Associate
24 Director of ERP?

25 A Well, I manage a team of twelve analyst

1 programmers, and we're responsible for supporting and
2 maintaining the administrative computing systems of
3 Portland State.

4 Q And does that include maintaining student
5 records?

6 A Yes.

7 Q And how long have you been responsible for
8 maintaining student records at PSU?

9 A 22 years.

10 Q So it's safe to say you're generally familiar
11 with the procedures for maintaining student records?

12 A Yes.

13 Q And the security of maintaining student
14 records?

15 A Yes.

16 Q Can you tell me how records are electronically
17 stored at PSU?

18 MS. SINNOTT: And this is where the visual aid
19 will come in handy.

20 THE COURT: All right.

21 A Okay, we have three Oracle databases. And so
22 on this picture, the blue box is OAM, that's Odin Account
23 Manager. And that's where the general student computer
24 accounts, and faculty and staff, as well, are stored.

25 The second one, the green box, that's the

1 Banner Information System. That stores data on student
2 registration, accounts receivable, and other
3 administrative records like that.

4 Oh, and the word "Banweb", Banweb is the web
5 interface into the Banner records, so where you would go
6 to register for classes, say.

7 The third Oracle database is the pink box, the
8 data warehouse. And every day, we take data from OAM and
9 from Banner and it's fed to the data warehouse. It's a
10 query-only, read-only database, and that's where the
11 campus does their reporting from.

12 Q And so would this data warehouse be secure?

13 A Yes.

14 Q And can you explain to me how it's secure?

15 A In order to log into it, you need a user
16 ID/password, and you have to have been granted access to
17 see certain parts of the data.

18 Q Okay. So it wouldn't -- somebody from the
19 street couldn't just log in and change the data for -- at
20 the data warehouse.

21 A Correct.

22 Q So, as I'm sure you're aware, this case
23 involves a controversy over fall 2010 registration. And
24 one of the issues is whether the Debtor, Mr. Soballe,
25 agreed to PSU's RCAP before he registered for fall 2010.

1 So I'm going to ask you a couple questions about that.
2 So could you please turn to Exhibits C and D? And you
3 can take as long as you need.

4 A Yes.

5 Q Do you recognize these documents?

6 A Yes.

7 Q And -- and what are they?

8 A So, Exhibit C is the Banweb page that you would
9 go to. So first you would log in with your user
10 ID/password.

11 And then once per term, you would be presented
12 with this page. And you would have to click "accept".
13 So the word "accept" is in the middle on the bottom.
14 It's a -- it's a button. You click "accept", and then
15 you would be navigated to the registration page, where
16 you could register for classes.

17 Q Okay, great. So would a student have to click
18 "accept" before being allowed to navigate to the
19 registration page for each term?

20 A Correct.

21 Q Okay. And can you just read for me -- well,
22 first let's look at the top where it says "here", it's in
23 blue.

24 A Mm hm.

25 Q What -- why is that in blue?

1 A So that's a hyperlink, and you click on it, and
2 it presents to you Exhibit D.

3 Q Okay.

4 A Which is the Revolving Charge Account
5 Agreement.

6 Q Okay.

7 THE COURT: Wait, wait, wait. What are you
8 looking at?

9 THE WITNESS: So on Exhibit C --

10 THE COURT: Yeah.

11 THE WITNESS: -- that first sentence under the
12 green line, there's a "click here for the details".

13 THE COURT: Oh, all right.

14 THE WITNESS: The "here" is in blue.

15 THE COURT: All right, yeah. Yeah. I just --

16 THE WITNESS: Okay, so you click there.

17 THE COURT: -- I didn't see it, so okay.

18 Q (by Ms. Sinnott) And then --

19 A And -- mm hm.

20 Q Oh, I'm sorry.

21 A No, I'm done.

22 Q And can you just read for me under the "I
23 accept PSU terms and conditions," the first bullet there?

24 A You're on Exhibit C?

25 Q Yes.

1 A So, item one?

2 Q Mm hm.

3 A "The following page outlines the terms and
4 conditions currently applicable to this agreement.

5 "These terms and conditions can also be found
6 in OAR 577-072-0020."

7 Q Okay. And then can you also read number four?

8 A "All debts incurred pursuant to the Revolving
9 Charge Account Plan are for the purpose of furthering my
10 education at Portland State University where I am
11 enrolled in classes and/or approved for enrollment."

12 Q Thank you. Can you please turn to Exhibit B?
13 Do you recognize this document?

14 A Yes.

15 Q And can you just explain generally what this
16 is?

17 A So, this is the audit trail from the OAM
18 system. So that was the blue box in this picture, Odin
19 Account Manager. And these records, this is the student
20 ID, PSU ID, of Mr. Soballe.

21 Q Okay. And did you access this record through
22 the data warehouse?

23 A Yes.

24 Q And so if you look down at the second line --
25 and actually, let's just explain for the Court, so where

1 it says "term", can you explain what these numbers mean?

2 So 2010-03 and then 2010-04?

3 A You're on another exhibit.

4 THE COURT: What exhibit are you on?

5 MS. SINNOTT: On Exhibit B.

6 THE WITNESS: Okay.

7 MS. SINNOTT: Right next to the ID numbers.

8 THE COURT: Okay.

9 MR. FULLER: Exhibit B?

10 THE WITNESS: So sorry, I thought we were on A.

11 We're on B?

12 THE COURT: No, you did ask her about A.

13 MS. SINNOTT: Oh, I'm sorry, B.

14 THE WITNESS: B, okay.

15 MS. SINNOTT: B, I must not have --

16 THE WITNESS: Oh, so I misunderstood.

17 MS. SINNOTT: Yes.

18 A B. So, okay, I was describing A.

19 B is the registration data for Mr. Soballe.

20 Q (by Ms. Sinnott) Okay. And it looks like we
21 have the same ID number there, so that's Mr. Soballe's ID
22 number?

23 A Correct.

24 Q Okay. So now I'll ask, the term?

25 A Yes, the term.

1 Q Okay, can you just sort of explain, what are
2 these numbers, 2010-03 and 2010-04?

3 A So, the first four numbers are the year, and
4 then 03 is summer. So 01 is winter, 02 is spring, 03 is
5 summer, 04 is fall.

6 Q Okay. So, on the second line there, would that
7 have been fall 2010?

8 A Correct.

9 Q Okay, great. And so it looks like here,
10 registration date is July 3 -- the first one is July
11 30th, 2010? Do you see that?

12 A Yes.

13 Q Would Mr. Soballe have been required to "click"
14 -- "click the box" on Exhibit C before being allowed to
15 register on July 30th?

16 A Yes, because that's the first time that term
17 was -- the term above is from the prior term, so.

18 Q Okay.

19 A Mm hm.

20 Q And just because we were talking about Exhibit
21 E before, I want to make sure we are all on the same page
22 about where this document came from.

23 So, can you describe, did -- where did this
24 document come from?

25 A So, I log into the Oracle database, I use SQL,

1 it's the Structured Query Language, it's how programmers
2 query Oracle database.

3 Q Okay.

4 A And that's how I got it.

5 Q So now we're going to go to Exhibit E.

6 A Okay.

7 Q And let's just start from the beginning, even
8 though you already answered these questions. Do you
9 recognize this document?

10 A Yes.

11 Q And what is it?

12 A So this is the audit trail from OAM, and OAM is
13 the blue box on this picture, Odin Account Manager.

14 Q Okay.

15 A And the audit trail for Mr. Soballe.

16 Q Okay. So it looks like there are a bunch of
17 event dates there. And I'm most concerned with this
18 event date on July 22nd, 2010, do you see that line?

19 A Yes.

20 Q And it looks like -- does that -- this is
21 pretty obvious, but I want to make sure we all
22 understand, does that -- did Mr. Soballe change his
23 password on that date?

24 A Yes.

25 Q Okay. And what would Mr. Soballe have been

1 required to do on that date before he could change his
2 password?

3 A So, anytime you change your password in OAM,
4 you're required to agree to three University policies.
5 One is the Appropriate Use Policy, one is the Electronic
6 Communications Policy, and the third one is RCAP, the
7 Revolving Charge Account Policy.

8 Q Okay. So it looks like Mr. Soballe then would
9 have agreed again to the RCAP on July 22nd, 2010, is that
10 correct?

11 A Correct.

12 Q One of the issues that the Debtor has raised
13 during the course of this proceeding is that a 2005
14 agreement that was produced to him had two different
15 formats, two different versions.

16 Do you have any idea as to why they would have
17 been produced in two different versions -- or two
18 different formats?

19 A I believe one of those documents came out of
20 the data warehouse, the pink box on this sheet. And so
21 the person who wrote the report chose a particular font,
22 and -- and so that's what was displayed on the report.

23 But in the end of the day, it's all zeros and
24 ones, it's the data that matters, and the font is merely
25 part of the presentation.

1 Q Thank you.

2 MS. SINNOTT: And I have no further questions.

3 MR. JONES: Your Honor, at the risk of trying
4 the Court's patience, because Debtor was unable to depose
5 Ms. Powell, we would ask for maybe a five minute recess
6 so we can prepare cross questions?

7 THE COURT: I'm okay with that. Just so you
8 know, they're testing the air in the courtroom at noon,
9 so whatever -- however long we go, we do have to break at
10 noon.

11 MR. JONES: Okay. And if I could, Your Honor,
12 too, I actually have an adjourned confirmation hearing at
13 1:30 that I can -- if -- if it goes that long, I can pop
14 up to Judge McKittrick's room for -- for five minutes.

15 THE COURT: Down to Judge McKittrick's, but yes
16 --

17 MR. JONES: Down.

18 THE COURT: -- that's fine. All right, we'll
19 take a five minute recess.

20 MS. SINNOTT: Thank you.

21 (Recess)

22 THE CLERK: Please rise. Court is once again
23 in session, the Honorable Trish M. Brown presiding.
24 Please be seated.

25 //

1 MS. SINNOTT: Your Honor, I don't want to
2 interrupt the cross exam, but I did realize that I
3 neglected to ask if we could admit those exhibits into
4 evidence.

5 So can I now ask the Court?

6 THE COURT: B, C, D --

7 MS. SINNOTT: B, C, D, E.

8 THE COURT: Well, B is already in.

9 MR. JONES: No objection.

10 THE COURT: All right. B --

11 MS. SINNOTT: Thank you.

12 THE COURT: B, C, D and E are admitted.

13 (Creditor PSU's exhibits B, C, D and E were
14 then received into evidence)

15

16 **CROSS EXAMINATION**

17 BY MR. JONES:

18 Q Hi, Ms. Powell. Just a few questions for you
19 here. I'm going to refer you back to PSU Exhibit E there
20 in that binder.

21 And Ms. Powell, it's your testimony that on all
22 these dates that are listed here in Exhibit -- actually,
23 if I said D, I meant Exhibit E -- all these dates that
24 are in Exhibit E then, Mr. Soballe would have went online
25 to the -- to the Banner system, clicked on a box, and

1 then agreed to an RCAP with PSU, is that correct?

2 A On the 2010 and forward, yes.

3 Q So it's your testimony that as late as October
4 21st, 2015, that Mr. Soballe was agreeing to a RCAP with
5 PSU?

6 A Correct.

7 Q Are you aware that this was many years after
8 Mr. Soballe had attended PSU and registered for classes?

9 A According to the registration data, yes.

10 Q Do you know approximately when the last time
11 Mr. Soballe attended classes or registered for classes at
12 PSU?

13 A Registered, we'd have to look at Exhibit B, I
14 believe.

15 Q Mm hm.

16 A Whether he attends classes or not, that's not
17 for me to say.

18 Q Okay, whether he registered for classes, the
19 last time he registered for classes. And we can look at
20 Exhibit B, if you'd like.

21 A Yes, so one can log into Banweb and look at
22 transcripts, do other things. It's not just register for
23 classes that you would log into Banweb.

24 Q Right. But is it your testimony today that, as
25 late as October 21st, 2015, one of the things that Mr.

1 Soballe did when he went online was clicked on a box and
2 agreed to RCAP with PSU?

3 A Correct.

4 Q In 2015.

5 THE COURT: Well, while you're on this, what
6 does "AUP accepted" mean?

7 THE WITNESS: So, that was the part where you
8 have to agree to three University policies. The first
9 one is the Appropriate Use Policy, the Electronic
10 Communications Policy, which is now -- in 2010 it was
11 called the Electronic Communications Policy, it's now
12 called the Email Communications Policy. And then the
13 third one is RCAP.

14 The event code we call AUP, but it includes all
15 three of those agreements. It's just the text name for
16 having clicked the box.

17 THE COURT: Okay.

18 Q (by Mr. Jones) Ms. Powell, do you have any
19 personal knowledge that Mr. Soballe reviewed the
20 agreement in Exhibit A or B?

21 A Exhibit B is the registration data.

22 Q Exhibit -- Exhibit A, then.

23 A Yes, so --

24 Q Actually, Exhibit --

25 A -- so if you're asking why it says "password

1 change" versus "AUP accepted," is that the question on
2 Exhibit E? I can explain that.

3 Q No, but you can -- you can explain that if
4 you'd like.

5 A So, when we had the Lighthouse system, which
6 you see the resource name is Lighthouse, every time you
7 changed your password, you had to agree to all three
8 policies. And then we decided, well, that was a lot of
9 agreeing to have to do every time you read -- read the
10 policies. So then we went to OAM 2.0, we switched
11 systems. And then just every six months you had to
12 agree.

13 So that was the difference there.

14 Q Okay. So -- so I -- my question was -- and
15 thank you for that clarification -- was, do you have any
16 personal knowledge that Mr. Soballe viewed any version of
17 an RCAP?

18 A So, in other words, did he click the "here" --

19 Q The --

20 A -- hyperlink? Did he click the "here"
21 hyperlink? Is that the question?

22 Q The question is, do you have any personal
23 knowledge that Mr. Soballe viewed any version of the
24 RCAP?

25 A Other than the audit trail in Exhibit E, no.

1 Q And if I could ask you again, on the -- on the
2 audit trail, can you tell me -- well, I think we covered
3 that.

4 So, the audit trail, just -- just to make it
5 clear, is just all those dates and every time that Mr.
6 Soballe would have allegedly went online and clicked on
7 the box, correct? Correct?

8 A He clicked "accept", yes.

9 THE COURT: So, let me ask you this. When I --
10 I'm trying to understand what happens.

11 When I, for example, go into something and you
12 -- like iTunes, for example, right? And I get into
13 iTunes, and at some point, you have to -- they -- it pops
14 up and you have to say "I accept", and you have to say
15 you've read it, but of course nobody reads it. It -- is
16 -- is that -- does the document pop up? Or you just say
17 "accept"?

18 THE WITNESS: So what pops up, what popped up
19 in 2010 was Exhibit B. And then you had to click the
20 "here" to -- to read the details.

21 THE COURT: Exhibit B?

22 MS. SINNOTT: Exhibit C.

23 THE WITNESS: C, sorry, C.

24 THE COURT: So -- so this pops up.

25 THE WITNESS: Yes.

1 THE COURT: And you have to accept.

2 THE WITNESS: Correct.

3 THE COURT: And then something else also pops
4 up, right, that's not relevant to this discussion? The -
5 - the -- something else. You said there was three things
6 you had to agree to. Do three different boxes pop up and
7 you have to accept?

8 THE WITNESS: Three hyperlinks are presented,
9 and then you can click on them to read the details.

10 THE COURT: But -- but this particular thing,
11 C, would have popped up, the whole thing would have
12 popped up?

13 THE WITNESS: Just C pops up, and you have to
14 click "here" to get to Exhibit D.

15 THE COURT: Okay.

16 Q (by Mr. Jones) So, Ms. Powell, I guess
17 continuing on with this -- this line of questioning.

18 So, if we look at Exhibit C, as you just
19 testified, this is what pops up. Do you -- is there any
20 documents or do you have any personal knowledge that Mr.
21 Soballe would have clicked "here" and viewed the RCAP?

22 A No, I think it's his responsibility to click
23 "here".

24 Q And I'm going to flip back to Exhibit D. So
25 Exhibit D is what a student like Mr. Soballe would have

1 seen had they clicked on the hyperlink that said "click
2 here", right?

3 A Correct.

4 Q Can you pan down just to the -- to the bottom
5 of the page there on Exhibit B, page 1?

6 A Yes.

7 Q Do you see where it says "Return to" and then
8 has Portland State University's --

9 A Yes.

10 Q -- address? So if one were to actually click
11 on the box and look at this blank agreement here, they
12 would also see that it said "Return to Portland State
13 University," correct?

14 A Yes.

15 Q Do you know if a completed RCAP was ever
16 returned to Portland State University at that mailing
17 address?

18 A The only time you would fill this out is if you
19 were standing at the window and you bypass Banweb. In
20 other words, if you were trying to bypass clicking on
21 "accept" and agreeing electronically, they'd catch you at
22 the window and you'd have to then sign in wet ink.

23 Q But to be clear, this is the exact copy of what
24 a student like Mr. Soballe would see if they click on the
25 box. Correct?

1 A That there's -- yeah, there's two pages.

2 Q Yeah.

3 A Yeah.

4 Q And that -- that agreement would be identical
5 in the sense it would say "Return to Portland State
6 University Business Affairs, BOAR, PO Box 202, Portland,
7 Oregon 97207", correct?

8 A It says -- okay, what it says above there is,
9 "You may revoke your consent for the use of your SSN by
10 writing to," that's the writing to part.

11 Q Just that -- I'm just referring to where it
12 says "Return to".

13 A Mm hm.

14 Q And in red, in bold and bigger letters at the
15 bottom.

16 A Yes.

17 Q Okay. So if we could -- we have here Exhibit
18 E, and if you'd sort of flip back to Exhibit A. So on
19 Exhibit A we have what appears to be an e-signed RCAP.
20 Correct?

21 A Correct.

22 Q So this is not what Mr. Soballe or a student
23 like Mr. Soballe would see when they clicked on the box,
24 it would be a blank RCAP, correct?

25 A Correct.

1 Q Each time, even as late as 2015, you'd be
2 clicking and you'd see a blank agreement. Not --

3 A Correct.

4 Q -- a completed RCAP.

5 A That's how electronic signatures work.

6 Q Well, thank you. Well, you say that's how
7 electronic signatures work, but if there was a completed
8 RCAP in Exhibit A, is there any reason that that wouldn't
9 be attached to online, that a student would actually be
10 viewing the completed RCAP?

11 A No. No, this Exhibit A was pulled out of the
12 data warehouse, the pink box. And that's how we were
13 talking about, you know, the font was chosen by the
14 report writer.

15 Q Mm hm. So I'm now going to refer you to, and
16 the Court and opposing counsel, to Debtor's Exhibit 16.
17 I'll give you some time to find that in the binder, and
18 then just let me know when you're there.

19 A Okay.

20 Q Give me one second, please.

21 (Pause)

22 Q And I think if we could kind of do this in
23 tandem, I -- I'll have you also look at Plaintiff's -- or
24 Debtor's, sorry, Exhibit 1. And so we'll be kind of
25 flipping back from Exhibit 1 and Exhibit 16. And we'll -

1 - we'll start out with Exhibit 1, Ms. Powell. And we're
2 specifically going to be looking at pages -- several
3 pages in Exhibit 1. And we're going to be going to what
4 looks to be an actual, the RCAP. See that?

5 A Exhibit 1?

6 Q Yeah, the RCAP in Exhibit 1.

7 A Yes.

8 Q And we'll take a look at page 1 of that RCAP in
9 Exhibit 1, and then we'll flip to page 1 of Exhibit 16.
10 You talked about the different fonts that may vary
11 between versions of an RCAP. Can you explain any other
12 discrepancies that there is between Exhibit 16 and
13 Exhibit 1, the RCAPs in both of those?

14 A You want me to review it right now, you mean?

15 Q If you can.

16 A Can I take out one piece of paper out of the
17 binder and so I can look at them side-by-side?

18 Q Sure. Maybe as long as you put them back
19 afterwards.

20 (Pause)

21 THE COURT: Is there a difference in the
22 wording?

23 MR. JONES: Your Honor, I think -- if I
24 understand correctly, when we -- before we did openings,
25 what you're concerned about is possibly any what you call

1 substantive difference between the agreements in the
2 material terms and conditions.

3 THE COURT: Right.

4 MR. JONES: Right? Debtor's argument would be
5 that it's PSU's burden here to show that there was a
6 formation of an agreement, that Mr. Soballe assented to
7 the agreement. They are producing one e-signed document
8 from 2005, although they're now saying that he entered
9 into an RCAP, or this RCAP, or multiple RCAPs throughout
10 his time at PSU, but they're only producing one from 2005
11 that shows that he clicked on this box and his e-
12 signature was generated.

13 I think that the differences, whether
14 substantive or, you know, different formats, or different
15 words, or different language, goes to whether this actual
16 agreement was assented to. Goes to its authenticity. If
17 there's different wording, if there's different language,
18 there's different formats, there's different dates.

19 THE COURT: Is -- I am asking you, is there any
20 difference in the language between Exhibit 1 and Exhibit
21 16?

22 MR. JONES: There's --

23 THE COURT: I see there's like his address is
24 in one and it's not in the other one, I see that the
25 footer is different. What I want to know is, is the

1 language in the agreement any different?

2 MR. JONES: The language regarding the -- if I
3 testify to that, the -- the language regarding the terms
4 and conditions is the same.

5 THE COURT: Well --

6 MR. JONES: But there are substantive
7 difference in the versions.

8 THE COURT: -- so it sounds like you're asking
9 her to compare these two agreements, right?

10 MR. JONES: Yes.

11 THE COURT: If there are differences, ask her,
12 "Isn't this different?"

13 MR. JONES: I can do that. I will.

14 THE COURT: Really? I mean, this isn't
15 supposed to be a "gotcha". Right? Ask her.

16 MR. JONES: Okay.

17 Q (by Mr. Jones) Ms. Powell, is the form -- date
18 format different between Exhibit 1 and Exhibit 16?

19 A Yes.

20 Q Is there a missing digit between -- in the time
21 of acceptance between Exhibit 1 and Exhibit 16?

22 A Hm, there is.

23 Q In the bottom in the footer, is the -- is the
24 footer, where it says "Portland State University", is
25 that different between 1 and 16?

1 A Yes. The -- the date, you mean?

2 Q No, the -- the footer, the actual footer where
3 it says "Portland State University, Accounts Receivable,
4 RCAP", one has a date --

5 A Right.

6 Q -- one doesn't have a date.

7 A The date, mm hm.

8 Q If we look at the top of Exhibit 16, where it
9 says "Revolving Charge Account Agreement" and then
10 "Portland State University" above that, if we look at
11 Exhibit 1 --

12 A That's the same.

13 Q That is the same. There's a different address
14 on one of the other versions, but.

15 So explain the differences in these two
16 agreements, then.

17 A So, one of them was generated out of the pink
18 box, the data warehouse. And so the person who wrote the
19 report, apparently, I don't know which one is which,
20 though. The A, I believe, is the one -- or 1, sorry,
21 we're on numbers not letters now.

22 One and A are the same, is that true, between
23 these two folders? Or --

24 Q I don't believe so.

25 A No. Okay.

1 THE COURT: I think they're the same document.
2 Look at the number at the bottom.

3 Q (by Mr. Jones) Is -- is 1 and A that we're
4 dealing with, was that your question, Ms. Powell?

5 THE COURT: I think it's 16 --

6 A 1 and 16, or no.

7 Q Right.

8 THE COURT: -- 16 and --

9 THE WITNESS: 1.

10 THE COURT: -- A are the same.

11 THE WITNESS: Okay.

12 MR. JONES: 16 an A.

13 THE COURT: 16 and A have the same PSU
14 numbering, right? PSUNIV2000036.

15 MR. JONES: Right.

16 THE COURT: And the difference between A and 16
17 is that PSU has added "Exhibit A, page 1 of 2" on it,
18 right? That's the difference between -- right?

19 MR. JONES: Between the two versions of the --

20 THE COURT: Between A and 16.

21 MR. JONES: I believe that's correct.

22 My confusion initially was that the RCAP that
23 was produced in Mrs. Looney's declaration is -- was
24 different, so I had to refer back to Exhibit 1 of
25 Plaintiff's, because that's what was produced in their

1 declaration.

2 THE COURT: Well, that's fine. 1 -- but the
3 difference between your 16 and PSU's A --

4 MR. JONES: Mm hm.

5 THE COURT: -- is only the identifier that was
6 put on by counsel.

7 MR. JONES: Correct.

8 THE COURT: Correct? So A and 16 are the same
9 document.

10 So now you're asking about differences between
11 1 and 16, right?

12 MR. JONES: Correct.

13 THE COURT: Okay.

14 MR. JONES: Thank you.

15 Q (by Mr. Jones) So again, I'll repeat my
16 question.

17 Would you describe to me why in this retrieval
18 of the versions of the RCAP from the data warehouse, why
19 these differences or discrepancies would occur in these
20 different versions of the RCAP?

21 A Oh, I believe it's A and 16 came from the data
22 warehouse. And then where did 1 come from?

23 Q I don't know.

24 A You -- you provided it, though.

25 Q Well, if we look at 1, you see the numbers

1 below, it was -- indicates that it was provided by PSU.
2 And that's my question.

3 Is -- is how those difference --

4 THE COURT: If you don't know the answer, you
5 don't know the answer.

6 A Yeah, I mean, it's just we decided fonts and
7 formats. Again, though, the data is the same, and the
8 content's the same.

9 Q So --

10 THE COURT: Well, the data isn't exactly the
11 same. There's a partial Social Security number on 1, and
12 there isn't that on 16. The footer is different.
13 There's an address in 1, and that isn't in 16.

14 MR. JONES: And the date.

15 Q (by Mr. Jones) So --

16 THE COURT: The date is the same.

17 A So --

18 THE COURT: It's just a different time.

19 A Yeah.

20 Q Well --

21 A We used to use Social Security number before it
22 was a secret PII number. And then we stopped using that,
23 and started using accounts.

24 Q So, it appears then that this data that's
25 entered into, or at least the -- the identifiers in this

1 form can be manipulated. We have two different versions.
2 So in some way or another, what comes out of -- out of
3 the system is data that can be manipulated and create
4 some discrepancies in the different RCAPs, correct?

5 A But we don't know where 1 came from, do we?

6 Q Well, I think if we look at the -- the bottom,
7 we can see that it was produced by PSU.

8 A I mean, I don't know if it came out of the data
9 warehouse, though.

10 Q Well, I -- I don't know where it came from.

11 MS. SINNOTT: Your Honor, we will have a
12 witness to testify as to where these two versions came
13 from.

14 THE COURT: Okay.

15 MS. SINNOTT: It's not Ms. Powell. I don't
16 know if that might help.

17 MR. JONES: No further questions. Thank you.

18 MS. SINNOTT: Can -- can I just ask a couple of
19 follow-up questions?

20

21 **REDIRECT EXAMINATION**

22 BY MS. SINNOTT:

23 Q Thank you, Ms. Powell.

24 So I just want to make sure that everyone is
25 clear on how Mr. Soballe would have agreed to the RCAP in

1 2010.

2 So, you testified earlier that when he changed
3 his password, and that would have been through the OAM,
4 and I actually don't have one of the pages in front of
5 me, but that's -- the OAM was what box? Can you just
6 hold it up so I can see it? I gave away all my copies.

7 A Oh, the blue box.

8 Q Yeah, so --

9 THE COURT: Blue.

10 Q -- so when -- when Mr. Soballe went into OAM to
11 change his password, was it your testimony that he would
12 have had to accept the three policies, including the
13 RCAP, before he could change his password?

14 A Yes.

15 Q Okay. And that OAM data is reflected in
16 Exhibit E, correct?

17 A Yes.

18 Q Additionally, before he could register in
19 Banner, which is the other box, he would have had to
20 click the terms and conditions in Exhibit C. He would
21 have had to have clicked "accept" on the terms and
22 conditions in Exhibit C, is that correct?

23 A Correct.

24 Q Okay. Then both of these sets of data is swept
25 into the data warehouse, where in that data warehouse, it

1 is read-only, is that correct?

2 A Correct.

3 Q And did you retrieve the audit trails for both
4 the OAM password change and the Banweb acceptance of
5 terms and conditions -- oh, actually we -- yeah, the
6 password -- no, wait, sorry.

7 Did you get the -- the data from the OAM
8 password change from the data warehouse?

9 A Yes.

10 Q Okay.

11 MS. SINNOTT: That's all I have. I hope that
12 helped clarify.

13 THE COURT: It did.

14 THE WITNESS: Well, I did have one idea. I
15 don't know if I should say, but --

16 THE COURT: Yeah, no, don't guess.

17 THE WITNESS: Okay, I was going to guess, yeah.

18 THE COURT: Yeah, don't --

19 (Laughing)

20 MS. SINNOTT: No further questions.

21 (Laughing)

22 THE COURT: Don't -- yeah, you don't answer
23 questions if nobody's asking you a question.

24 May this witness be excused? You can stay if
25 you want, but --

1 MS. SINNOTT: I am fine with that.

2 MR. JONES: Yes.

3 THE COURT: You're -- you're not required to.

4 THE WITNESS: Okay.

5 MS. SINNOTT: Your Honor, I would like to call
6 Nicolle DuPont.

7 THE COURT: Okay.

8

9 **NICOLLE DUPONT**

10 called as a witness by the Creditor PSU, having being
11 first duly sworn, was examined and testified as follows:

12 THE COURT: Please be seated. State your full
13 name and spell your last name for the record.

14 THE WITNESS: Nicolle DuPont, D-u-P-o-n-t.

15 THE COURT: All right.

16 MS. SINNOTT: Thank you, Ms. DuPont. And can
17 you just alert the Court as to a hearing issue that you
18 might have?

19 THE WITNESS: I can't hear out of my right ear.

20 MS. SINNOTT Okay, so we'll make sure that if
21 you -- when we ask a question, if you can't hear it,
22 please let us know.

23 THE WITNESS: I will.

24 MS. SINNOTT: Thank you.

25 THE COURT: And we also have, maybe --

1 THE CLERK: I'm not sure those are going to
2 help.

3 THE COURT: Okay. All right.

4 MS. SINNOTT: Just -- just let us --

5 THE WITNESS: I should be fine.

6 MS. SINNOTT: We'll -- we'll try to speak --

7 THE WITNESS: I'll turn.

8 MS. SINNOTT: Okay, great, thank you.

9 **DIRECT EXAMINATION**

10 BY MS. SINNOTT:

11 Q Ms. DuPont, can you tell me where do you work?

12 A I work at Portland State University.

13 Q And what is your title at Portland State
14 University?

15 A I'm Associate Registrar for Registration,
16 Records and Operations.

17 Q And what are your responsibilities as Associate
18 Registrar?

19 A I primarily oversee the procedures surrounding
20 registration, recordkeeping, and the front line service
21 for the Registrar's Office.

22 Q Can you explain, what does front line service
23 mean?

24 A Sorry, that is the folks who work at the front
25 counter, answer the phones and respond to our service

1 email account, registrar@pdx.edu.

2 Q Great. And how long have you worked for the
3 Office of the Registrar?

4 A For 15 years.

5 Q So is it safe to say you're familiar with the
6 procedures of the Office of the Registrar?

7 A Yes.

8 Q Can you please turn to Exhibit F?

9 A Yes.

10 Q And just in the interest of time, I'll tell
11 you, it looks like there are four different records in
12 Exhibit F.

13 A Yes. Yes.

14 THE COURT: Oh, mic is not working.

15 A Yes.

16 Q Do you recognize these records?

17 A Yes.

18 Q And how do you recognize these records?

19 A I produced them.

20 Q And can you tell me how you accessed these
21 records?

22 A Sure. The first page, I went into the Banner
23 Student Information System and did a screenshot.

24 The second page, which is the student schedule
25 as it appears in Banweb, I went into the web portal and

1 did a screenshot of how it would appear if a student or
2 advisor were to log into the web portal of Banner.

3 The next document is a few pages, and it's the
4 academic transcript, which I printed out through the
5 Banner Student Information System.

6 And the last page is screenshots of the
7 registration audit trail from the Banner Student
8 Information System.

9 Q Thank you. So from this first page, it looks
10 like at the top here -- actually, I'm sorry, let's go to
11 the second page.

12 A Yes.

13 Q So, can you just describe what specifically
14 this document is?

15 A This is the document that's a screenshot of
16 what would appear in the Banweb Student Information
17 System. That's the portal that students use to access
18 their own account. They can add and drop classes or
19 courses from Banweb. They can also view their current
20 term registration or a future term registration, if
21 they've already registered. They can view their grades,
22 they can view how much money they owe, they can view
23 their major.

24 So this is --

25 Q Okay, so --

1 A -- what you get if you click on the Student
2 Schedule Detail.

3 Q Great. And so does this document show what
4 courses Mr. Soballe registered for in fall 2010?

5 A Yes.

6 Q And does it show when he registered for the
7 classes?

8 A Yes. In each chunk, under the course, there's
9 a status field, and it has both the date and the manner
10 in which the student registered. So it shows, for
11 instance on the first line under "Intro to Genetics
12 Recitation", that it was registered on the web. So that
13 would mean the student registered through this Banweb
14 portal, which requires student ID or OAM information, as
15 well as a password. And it records the date. So he
16 registered on August 21st, 2010, for that class.

17 Q Okay. Can you please turn to Exhibit H?

18 A Yes.

19 Q And do you recognize this document?

20 A Yes.

21 Q What is this?

22 A This is a photocopy of the Registration Guide
23 for the 2010-2011 academic year.

24 Q Can you turn to page 18 of 40, it's down there
25 at the bottom?

1 A Yes.

2 Q And right there on the first column, there's a
3 tuition refund policy?

4 A Yes.

5 Q Oh, I think that -- it just went out for a
6 moment. Along with a refund schedule?

7 A Yes.

8 THE CLERK: Can we stop for a second?

9 THE COURT: Hang on a second.

10 THE CLERK: If people have cell phones and
11 they're on mute, that's going to cause that problem. So
12 cell phones should be --

13 THE COURT: Everybody needs to turn their cell
14 phones off.

15 THE CLERK: Completely off.

16 THE COURT: Not -- completely off. Right? Not
17 just silenced. Okay.

18 Q (by Ms. Sinnott) Okay, so looking at this
19 tuition refund policy, can you just read there the refund
20 schedule under fall 2010 for me?

21 A Yes. So the fall 2010, it shows the dates in
22 which you can receive a particular type of refund. So
23 for fall of 2010, you could receive 100 percent refund if
24 you dropped your courses on or before October 3rd. You
25 would receive a 70 percent refund from October 4th

1 through the 10th, a 40 percent refund October 11th
2 through the 17th, and a 20 percent refund October 18th
3 through the 24th.

4 Q And are there other ways that students could
5 obtain a refund after missing any of those deadlines?

6 A Sure. If a student does not take appropriate
7 actions to drop or withdraw from a course during the
8 scheduled refund periods, we have a petition called the
9 Deadline Appeal Petition that a student can submit during
10 the term and explain why they missed one of the
11 deadlines, and they can ask for a drop or a withdraw, and
12 they can ask for a refund. And that would be available
13 to them during the rest of the fall quarter.

14 If a student does not do that, they still have
15 another chance to use a Past Term Petition to explain why
16 they missed the deadlines and why they didn't take care
17 of it during the current term. And we accept those after
18 the term is over.

19 Q So really, there are two -- what you're saying,
20 there are two different ways you could go. The student
21 could either just, as of course, go in, drop a class
22 during the deadlines listed in this Registration Guide --

23 A Mm hm.

24 Q -- or, alternatively, if they fail to do that,
25 would they then be able to submit two different petitions

1 up to a year later to obtain a retroactive refund?

2 A Yes.

3 Q If a student is locked out of his or her online
4 account for registration, there's a registration hold on
5 that account, are there other ways that a student can
6 drop his or her courses?

7 A Yes. A student, if they have some type of a
8 hold preventing them from making registration changes on
9 Banweb, they can contact the Office of the Registrar. We
10 will help them either in person or via email or via fax,
11 as long as they can request the drop and provide their
12 signature, or via email they can provide their student ID
13 number and email us from their PSU email account.

14 Q So, essentially, an online hold does not
15 prevent a student from dropping a class in alternative
16 ways.

17 A That's correct.

18 Q Do you ever help students drop classes in these
19 ways?

20 A All the time. Yeah. Throughout the deadline -
21 - throughout the deadline periods, we routinely help
22 folks do it manually through the Registrar's Office, in
23 person or remotely.

24 Q And the Registration Guide in Exhibit H, is
25 that available -- how -- how would a student have access

1 to that guide?

2 A So, in 2010, we were still printing physical
3 copies of the Registration Guide, which were available at
4 the Registrar's Office, at the Bookstore, at the Student
5 Store, or in advising centers.

6 And then we also had a PDF of the Registration
7 Guide on our website.

8 Q Okay. Do you have any personal knowledge of
9 Mr. Soballe contacting the Registrar's Office in the fall
10 of 2010 to drop his classes?

11 A No, I don't. And I -- I did check to see if we
12 had any email correspondence in our service email
13 account, registrar@pdx.edu, which we archive the
14 conversations, and there -- there was nothing in the
15 email account, either.

16 Q So one of -- one of the documents you provided
17 to me during the course of this proceeding, which we
18 produced to the other side, it's not an exhibit, but it
19 does -- it did show what the ending registration numbers
20 were for each course. Do you recall that document?

21 A Yes.

22 Q Would that record have shown whether a class
23 was full or not at the beginning of a semester? Or I'm
24 sorry, at the beginning of a term?

25 A No. The document -- when we look historically

1 into the course enrollment data, it's going to show how
2 many students were registered when the course ended, and
3 those enrollments were rolled to student history.

4 So we don't have anything in the Banner Student
5 Information System that shows how many people were
6 registered on a particular day, like day one of the term.
7 And a lot of students do drop during the first four weeks
8 of the term.

9 THE CLERK: Cut out?

10 THE COURT: It did. Maybe you can have IT come
11 up and look at noon?

12 THE CLERK: Mr. -- Mr. Fuller, is your computer
13 set up to -- are you receiving emails during the course
14 of this --

15 MR. FULLER: No.

16 MS. SINNOTT: I'll make sure my WiFi's off,
17 too.

18 Q (by Ms. Sinnott) Can you please turn back to
19 Exhibit F?

20 A Yes.

21 Q Go -- go to page 5 of 7, please.

22 A Okay.

23 Q So down at the fall 2010 quarter, it looks like
24 there are X's next to those courses?

25 A Yes.

1 Q What does an X mean?

2 A An X means no basis for grade.

3 Q Does an X mean -- would it have anything to do
4 with whether a debtor -- or would it conclusively
5 establish whether a debtor attended classes or not --
6 excuse me, whether a student attended classes or not?

7 A No. An X just means no basis for grade. It
8 could be for non-attendance. It could also be for non-
9 participation. It could be a student that attended but
10 never turned in any work.

11 Q So if somebody at PSU were to look at the
12 Debtor's transcript here, they would not know whether or
13 not Mr. Soballe attended those three classes in the fall
14 2010 term?

15 A That is correct.

16 MS. SINNOTT: I have no further questions.

17

18 **CROSS EXAMINATION**

19 BY MR. JONES:

20 Q Hi, Ms. DuPont.

21 A Hello.

22 Q Just give me one second, if you would.

23 THE COURT: And you will need to talk into the
24 microphone when you start asking questions.

25 MR. JONES: Thank you, Your Honor.

1 MS. SINNOTT: While he's looking, can I just
2 clarify, we had stipulated to the authenticity of the
3 exhibits. Do I still need to offer the exhibits I just
4 referenced, or can we admit them?

5 THE COURT: I admitted them.

6 MS. SINNOTT: Okay, great. Thank you.

7 THE COURT: They can talk about relevance, but
8 I admitted them.

9 MS. SINNOTT: Okay.

10 MR. JONES: On -- on that note, if I may, Your
11 Honor, Exhibit -- Debtor's Exhibit 16, I did not offer
12 that for admission into evidence. It was really --

13 THE COURT: It came in already.

14 MR. JONES: Exhibit 16?

15 MS. SINNOTT: 16.

16 THE COURT: All of your exhibits came in.

17 MR. JONES: Oh, that's right. Thank you.
18 Well, I guess on that note, the purpose of offering that
19 exhibit was really for impeachment purposes to compare
20 those two versions. Not that Debtor has any
21 understanding whether the version in 16 or Exhibit --
22 PSU's Exhibit A or 1 is the authenticated --

23 THE COURT: Yeah, you can talk to me about that
24 in closing. But it's admitted.

25 MR. JONES: Thank you.

1 Q (by Mr. Jones) So I think we'll start off with
2 what we've already reviewed here as PSU's Exhibit H,
3 which is the Registration Guide. And opposing counsel
4 has already pointed out a refund schedule on page 18,
5 pertaining to the fall 2010 term.

6 A Yes.

7 Q And just to clarify, "refund" doesn't mean that
8 the -- the student, such as Mr. Soballe, would actually
9 get any money back. It's -- it would just be a reduction
10 in the amount that they owed PSU, correct?

11 A Right. The -- if the person had already paid,
12 they would get a refund. If the person had not paid,
13 there would be a refund to the charges. So it would --
14 the student might owe less.

15 Q So a reduction in the charges, right.

16 A Yes.

17 Q So I see that this Registration Guide talks
18 about, you know, a percentage of reduction that may
19 happen if the student dropped classes within different
20 periods of time throughout the term. What -- what I
21 don't see, perhaps you could help me, is there any
22 directions about how a student would drop classes in the
23 Registration Guide that you're aware of?

24 (Pause)

25 Q I mean, I -- I don't expect you to review the

1 whole agreement. I think we did cover this in your
2 deposition, if you recall.

3 A So, in page 10, it has registration basics,
4 when to register, how long the online registration hours
5 are available, the academic calendar, the where to find
6 the deadlines.

7 Q So again, how to -- this is how to register,
8 what are the deadlines, but no information about how to
9 drop --

10 A Dropping is an act --

11 Q -- specifically.

12 A -- is considered the same as registration, it's
13 all part of managing your courses.

14 But no, nothing specifically that calls out
15 that you should do the same thing that you did to add to
16 drop.

17 Q Right. Or if you added online, and -- and
18 there was a hold on the account, then you wouldn't be
19 able to do the same thing, using online to drop.

20 A Correct.

21 Q Correct. Now we're going to flip to the --
22 back to the registration, or the course registration
23 information that you reviewed with counsel.

24 A Which exhibit?

25 Q I think we'll go to -- we'll start with Exhibit

1 F. It's Exhibit F, I think all the registration data.

2 A Okay.

3 Q And specifically, I guess we're going to look
4 at page -- well, let's start with page 3. And we'll kind
5 of take pages 3 through 5 of Exhibit F kind of in unison.
6 And so these pages 3 to 5 here are -- show the courses
7 that Mr. Soballe registered for in fall 2010, correct?

8 A Three through 5 are an academic transcript, so
9 it shows the courses that are part of his academic
10 history.

11 Q Mm hm. And -- and part of that would be the
12 fall 2010 courses, isn't that correct?

13 A Correct.

14 Q And Mr. Soballe received no credit and/or
15 failing grades for fall 2010, correct?

16 A Correct, he did not earn credit.

17 Q Is it PSU's policy, at least in 2000 -- the
18 fall of 2010 semester, was that instructors were not
19 required to track attendance at all, is that correct?

20 A That's correct, we do not have a mandatory
21 attendance policy. We didn't in 2010, and we don't
22 currently.

23 Q Okay. So I'm going to have you look at our
24 exhibit list, because I think there's some registration
25 information that may be omitted in this version. And if

1 you give me a second, I'll tell you where to go. Looks
2 like exhibit 2 in that binder.

3 A Okay.

4 THE COURT: Oh, we've got to get that fixed.

5 THE CLERK: Didn't hear it that time.

6 THE WITNESS: Could it be my hearing aid?

7 THE CLERK: Possible.

8 THE WITNESS: I can take it out.

9 THE COURT: No-no-no, that's fine. But knowing
10 that that's -- might be an issue, that's helpful. So
11 that's fine.

12 Q (by Mr. Jones) So we're going to flip through
13 the page in Exhibit B, I think it's helpful if you kind
14 of look at the -- the PSUUNIV number that's at the
15 bottom, because these pages aren't specifically marked.
16 You'll keep flipping through, and it will be PSUUNIV2-a
17 bunch-of-zeros-ending-in-a-1, at the top of that page I
18 want you to flip to, it also says "21 Course Enrollment
19 Data".

20 A Yes.

21 Q Are you on there?

22 THE COURT: No. Mine starts at 3.

23 MR. JONES: Yeah, it does start at 3, because
24 it made sense to put them that way for the deposition,
25 but --

1 THE COURT: Okay, all right. Thank you.

2 MR. JONES: Yeah, it's like the eighth page, I
3 believe.

4 THE COURT: Yeah, I got it.

5 Q (by Mr. Jones) Okay, Ms. DuPont. So it is
6 true that at least at the end of fall 2010, that the
7 courses that Mr. Soballe registered for were not fully
8 attended. There were open seats in each one of those
9 classes, correct? And that's what this --

10 A Yes.

11 Q -- image shows. And it's true that for these
12 classes that Mr. Soballe registered for for fall 2010,
13 that no tracking of attendance was required by the
14 instructors of those courses, correct?

15 A Correct.

16 Q So there's no way to -- for PSU to know whether
17 Mr. Soballe actually attended the classes or not?

18 A Correct.

19 Q Okay, I think we're going to stick with this
20 binder, and we're going to flip to Exhibit 14, if you
21 would.

22 A I don't have a 14. I go from --

23 THE COURT: 5 to 16 --

24 A -- 2 to 3 to 5 to 16.

25 THE COURT: Which is what I was asking about

1 earlier.

2 MR. JONES: All right, let me check our -- do
3 you have a copy of our exhibit list? It's a declaration.

4 What I'm looking for is your declaration that
5 you filed in this case, actually. We did not list that
6 on our exhibit list. It's -- it's actually Ms. DuPont's
7 declaration that was already filed in this matter.

8 THE COURT: Why don't you just ask her a
9 question about it? It doesn't have to be an exhibit.

10 MR. JONES: Okay. Well, there are some
11 documents that are attached to the declaration, and
12 that's --

13 THE COURT: Well, that's a problem.

14 MR. JONES: Yeah.

15 THE COURT: You can ask her questions, though.

16 MR. JONES: All right. So --

17 THE COURT: What's the --

18 Q (by Mr. Jones) What I'm -- what I'm asking
19 questions about, there's -- there's -- if you can recall,
20 there's a declaration that you filed in this -- in this
21 case, and there was two documents attached to it, and
22 you've already talked about those two documents. One was
23 called a Special Registration Form.

24 A Yes.

25 Q And one is called a Deadline Appeals Petition.

1 A Yes.

2 Q Deadline Appeals Board Petition. Those are the
3 questions I'm going to ask about these documents.

4 A Okay.

5 THE COURT: Can you tell me what document
6 you're talking about?

7 MR. JONES: So, it's --

8 THE COURT: Document 24?

9 MR. JONES: -- it's Exhibit --

10 MR. FULLER: 24.

11 MR. JONES: It's, yeah.

12 THE COURT: Document 24, okay.

13 THE WITNESS: Am I supposed to be able to see
14 this?

15 THE COURT: No, you don't have it.

16 THE WITNESS: Okay.

17 THE COURT: He's just going to ask you
18 questions about it, and --

19 THE WITNESS: I'm familiar with what those are.

20 THE COURT: Okay.

21 Q (by Mr. Jones) Okay. And -- and if I can,
22 I'll ask the Court's permission, if we need to, I can --
23 I can walk up there and -- and actually --

24 A I know what the documents look like. It's
25 fine.

1 Q Okay. So specifically we're talking about
2 Exhibit 1, the Special Registration Form.

3 And at the -- at the top of that form, maybe I
4 can just read from this and you can verify that's what
5 the form says.

6 A Sure.

7 Q It says, "Complete this form and bring it in
8 person to the Admissions, Registration and Records
9 windows in the Neuberger Hall lobby after any required
10 approvals." Is that correct?

11 A I believe you.

12 Q So if a student were to get one of these
13 Special Registration Forms and they were to read it, then
14 it would appear that the only way that they would be able
15 to submit it, because the only way mentioned is to submit
16 it in person, correct?

17 A I believe that also has our contact information
18 on it, too, though. I'm not sure, at the bottom, if you
19 can see what year that document, if that was the actual
20 document that was in place in 2010 or not.

21 Q It says October of 2008.

22 A Okay. Then that was probably the one that was
23 being used in 2010.

24 Q And I don't see any contact information, at
25 least on the one that's submitted.

1 A Okay.

2 Q And now I'm going to ask a few questions about
3 the Deadline Appeals Board Petition that you spoke of.

4 A Sure.

5 Q And on this Deadline Appeals Board Petition, in
6 section 2 labeled "Instructor Statement", and it says,
7 "An instructor statement, signature and date are
8 required," and "required" is bolded, "for the Committee
9 to consider the petition. You may attach an email
10 statement from the instructor." And it has two little
11 arrows below that. "The instructor statement must be
12 written after the student's explanation." And then
13 second arrow, "To drop a class never attended and to
14 receive a refund, the instructor must verify the
15 student's non-attendance statement."

16 A Correct.

17 Q Okay. So you've already testified that
18 tracking attendance was not a requirement for the
19 instructors in any course.

20 A Correct.

21 Q So if the instructors in the 2010 fall classes
22 that Mr. Soballe registered for did not track attendance,
23 it may be impossible for him to have -- or a student in
24 his position to have gotten a written statement from the
25 instructor that says is required in bold to even consider

1 the petition. They wouldn't be able to necessarily
2 verify their non-attendance if there was no attendance
3 taken.

4 A Just because we don't require instructors to
5 take attendance and track it centrally, doesn't mean that
6 individual instructors don't actually track attendance
7 for their own class.

8 So we -- we routinely get statements from
9 instructors that verify, "I have no evidence of this
10 student attending or participating." It's up to each
11 instructor to manage their classrooms how they see fit.

12 Q I understand. Do you have any personal
13 knowledge of whether the instructors for those fall 2010
14 classes that Mr. Soballe registered for kept attendance?

15 A I have no idea.

16 Q Thank you.

17 MR. JONES: I don't think I have any further
18 questions. I just want to take a second to make sure so
19 I don't have to recross.

20 (Pause)

21 MR. JONES: I think that's all for Debtor.

22 MS. SINNOTT: I have just one quick follow up.

23 //

24 //

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Q Can you please turn to Exhibit H, page 14? Or I'm sorry, page 12 of 40?

A Yes.

Q (by Ms. Sinnott) And in the middle of that page, there is a portion that says "Registration Holds".

Q And isn't it true that this portion of the document directs students on where to go or who to call if they have a registration hold on their account?

Q Thank you.

THE COURT: All right, you may step down. Can this witness be excused?

THE COURT: All right. So do you want to take a short break before we --? So let's start again at 11. Realize wherever we are at noon, we have to stop. Okay.

Robyn M. Anderson, Transcriber (503) 618-9938
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1 MS. SINNOTT: That sounds good to me. Thank
2 you.

3 THE COURT: Okay.

4 (Recess)

5 THE CLERK: Please rise. Court is once again
6 in session, the Honorable Trish M. Brown presiding.
7 Please be seated.

8 MS. SINNOTT: Your Honor, I'd like to call
9 Megan Looney.

10

11 **MEGAN LOONEY**

12 called as a witness by the Creditor PSU, having being
13 first duly sworn, was examined and testified as follows:

14 THE COURT: Please be seated, state your full
15 name and spell your last name for the record.

16 THE WITNESS: It's Megan Maisel Looney, L-o-o-
17 n-e-y.

18 **DIRECT EXAMINATION**

19 BY MS. SINNOTT:

20 Q Good morning, Megan.

21 A Good morning.

22 Q Megan -- or, I'm sorry -- Ms. Looney -- again,
23 Ms. Looney.

24 Ms. Looney, where do you work?

25 A Portland State University.

1 Q And can you tell me what is your title at
2 Portland State?

3 A Currently, Assistant Director of Student
4 Financial Services.

5 Q And how long have you worked at Student
6 Financial Services?

7 A Of my 21 years at PSU, 19 have been within
8 Student Financial Services.

9 Q And what are your responsibilities as Assistant
10 Director of Student Financial Services?

11 A I oversee the student accounts, student
12 collections and cashier branches within Student Financial
13 Services.

14 Q And are you generally familiar with the
15 procedures and policies of Student Financial Services?

16 A Yes.

17 Q Can you please turn to Exhibit K?

18 A Yes.

19 Q Do you recognize this document?

20 A Yes.

21 Q And can you explain what it is?

22 A It's an email that I sent to Mr. Soballe at his
23 request of the Revolving Charge Account Agreement.

24 Q And why did you send this to Mr. Soballe?

25 A Per his request.

1 Q And how did you obtain a copy of this RCAP in
2 Exhibit K?

3 A At the time he made this request, I did not
4 have direct access to the data warehouse where this was
5 stored. We had migrated to a new system. And the data
6 warehouse that we are currently using did not contain
7 this data. So I had to put in a request to get somebody
8 to pull that data out of our old warehouse information.
9 And what I gave to Mr. Soballe was the information that
10 that person gave me from that database.

11 Q So you obtained this version of the RCAP from
12 another person.

13 A Correct. Who had access to that old data.

14 Q Great. And can you turn to -- well, actually,
15 let me back up.

16 So during the course of this proceeding, did
17 you provide me with a copy of the Debtor's RCAP?

18 A Yes.

19 Q And where did you get that version of the RCAP?

20 A Based upon the difficulty of having to always
21 put in a request to get an RCAP whenever I needed one, I
22 had requested for IT to move that information over to our
23 current data warehouse system. And they had been able to
24 do that.

25 And so what I supplied you was whatever had

1 been put into our new data warehouse, and the report had
2 been written to provide that data.

3 Q So can you explain to me then why the format
4 would have been different between these two documents, to
5 the best of your knowledge?

6 A So I think it's what Ms. Powell had referred to
7 earlier, is that whoever, in the new data warehouse,
8 selected the font and how to present the information,
9 presented it differently than how it had been presented
10 in our old data warehouse.

11 Q And can you -- I'm going to ask you to look at
12 three exhibits.

13 A Okay.

14 Q So the first is Exhibit A. And the second is
15 Exhibit D.

16 A Okay.

17 Q And the third is Exhibit K.

18 A Yes.

19 Q Have you had an opportunity to compare the
20 substantive language of each of these three versions of
21 the RCAP?

22 A Yes.

23 Q And are -- is the substantive language of these
24 three versions identical?

25 A Yes.

1 Q Why did you provide Mr. Soballe in 2013 and me
2 recently with the 2005 version of his RCAP?

3 A So, when I had looked at his -- his Report 19,
4 which is Exhibit M, it had referenced a RCAP from 2007.
5 And that was the basis upon what I was working on. And I
6 had -- my misunderstanding was that I had assumed all the
7 data was merged into one report. And I did not
8 understand -- I now have been corrected -- that there are
9 now two reports. And one is the information that is the
10 OAM data, versus what I had pulled, which was the old
11 substant -- the old RCAP information that came from the
12 prior warehouse. And so I -- there were two different
13 reports, and I was unaware of the other.

14 Q So let's actually to go Exhibit M, just so we
15 can make sure we're on the same page as you.

16 A Mm hm.

17 Q So when you're saying there was a 2007 RCAP
18 referenced --

19 A Mm hm.

20 Q -- is it because on the left-hand side, about
21 five lines down, it says "RCAP 2007-04"?

22 A Right.

23 Q And what would that mean? What would 2007-04
24 mean?

25 A That would indicate that he had signed the RCAP

1 in fall of 2007.

2 Q So what you're saying is, when you looked at
3 his Report 19, which is this Exhibit M --

4 A Mm hmm.

5 Q -- you assumed that the RCAP that was governing
6 his account was this 2007 RCAP.

7 A Right. It did not even occur to me to look for
8 more current OAM data.

9 Q Okay.

10 THE COURT: Okay, can I stop you? I have no
11 idea what you are looking at.

12 MS. SINNOTT: Exhibit -- Exhibit M.

13 THE COURT: I got Exhibit M up.

14 THE WITNESS: Yeah, it's --

15 MS. SINNOTT: Okay, so at the top left-hand --

16 THE COURT: Oh, "RCAP 2007-04"?

17 MS. SINNOTT: Yes.

18 THE COURT: Okay. All right.

19 Q (by Ms. Sinnott) So, Ms. Looney, this Report
20 19, which is Exhibit M --

21 A Mm hm.

22 Q -- you call it Report 19, correct?

23 A Mm hm, yeah.

24 Q This is what you would pull up when a student
25 was asking about his or her account, is that correct?

1 A Essentially. I mean, I pull that up in Banner,
2 this is a report that we typically provide to students,
3 because it provides it in a nice concise format. But
4 yes, if I were to print anything off, this is what I'd
5 print off. Oh, I look at it in Banner, it -- it's the
6 same information just presented differently.

7 Q Okay. Is your department in charge of putting
8 registration holds on student accounts?

9 A For nonpayment, yes.

10 Q And did your department put a registration hold
11 on Mr. Soballe's account in 2010?

12 A Yes, we did.

13 Q And what was the date of that registration
14 hold?

15 A We placed it on October 20th of 2010.

16 Q So before October 20th of 2010, would Debtor
17 have been able to access his online account to drop his
18 classes?

19 A Yes.

20 Q Can you please turn to Exhibit L?

21 A Yes.

22 Q Do you recognize this document?

23 A Yes.

24 Q And what is this?

25 A This is a registration -- register screen, in

1 which we can give them permission to override the
2 transcript hold that we place on student accounts.

3 Q And does this show that you -- you released
4 transcripts to Mr. Soballe?

5 A Yes, twice.

6 Q And do you recall the circumstances of
7 releasing those transcripts?

8 A I did not do the one in October of 2015. I did
9 do the one in March of 2016, and yes, he needed that to
10 be sent to an employer.

11 Q The one from October 21st --

12 A 2015 was done by someone else in my office.
13 But it was -- it was for something we would typically
14 release a transcript for. It was for employment, it was
15 going to the Portland Police Bureau.

16 Q Okay. Can you please turn to Exhibit K again?

17 A Yes.

18 Q Can you just read for me paragraph 10, where it
19 says "Billing Rate Summary"?

20 A "In case of errors or questions, the debtor may
21 challenge a charge within 60 days after the first billing
22 statement on which the suspected error or problem
23 appeared by directing his/her inquiry to the office
24 initiating the charge. If an error occurred, affected
25 charges will be adjusted. Tuition charges are disputed

1 by petitioning Admissions and Records within 12 months.
2 After these deadlines, tuition and other charges are
3 disputed via hearing letter to the Bursar's Office, PO
4 Box 202, Portland, 97207."

5 Q Thank you.

6 A Mm hm.

7 Q Can you turn to Exhibit G?

8 A Yes.

9 Q Do you recognize these documents?

10 A Yes.

11 Q And what are they?

12 A They are billing statements.

13 Q And are they billing statements that were sent
14 to Mr. Soballe?

15 A Yes.

16 Q Does the Office of Student Financial Services
17 have any record of Mr. Soballe contacting the office
18 after receiving these billing statements?

19 A No, we do not.

20 Q Can you turn to Exhibit J?

21 A Yes.

22 Q Do you recognize this document?

23 A Yes.

24 Q Can you explain what it is?

25 A This is the accounts receivable comments that

1 we use to memorialize any conversations that we have with
2 students that we think will be useful in the future.

3 Q And on this specific document, it looks like
4 there's an entry for the 6th of August, 2013, is that
5 correct?

6 A Correct.

7 Q And it says, "JS called to dispute he owes fall
8 2010. Claims that he wasn't able to drop the class."

9 A Mm hm.

10 Q Do you remember what the circumstances were of
11 Mr. Soballe contacting the Student Financial Services in
12 August of 2013?

13 A No. And it wasn't in -- the person who input
14 that was somebody within my office.

15 Q So let me just ask you generally, this comment
16 screen, had a student contacted Student Financial
17 Services to dispute a debt, would the University have
18 saved that contact in this comment?

19 A Generally.

20 Q So other than the contact in August of 2013
21 that's represented in this document, which is maintained
22 in Portland State's business records, does Student
23 Financial Services have any other record of Mr. Soballe
24 contacting PSU to dispute his debt?

25 A No, we do not.

1 Q Can you please turn to Exhibit M?

2 A Yes.

3 Q Do you recognize this record?

4 A Yes.

5 Q We -- we already talked about it. This is the
6 Report 19, is that correct?

7 A Right. Mm hm.

8 Q Can you tell me what, on the first transaction
9 detail there --

10 A Mm hm.

11 Q -- number 411 --

12 A Mm hm.

13 Q -- what does that mean?

14 A That is an entry saying that we have written
15 off his account, which means that we are no longer
16 actively collecting on it, aside from sending his
17 information to Oregon Department of Revenue for tax
18 offsets as a State agency.

19 Q So at this point, PSU does not intend to
20 collect on this debt? Is that correct?

21 A No, outside of tax offsets, no.

22 Q Can you please turn to Exhibit I?

23 A Yes.

24 Q Do you recognize this document?

25 A Yes.

1 Q Can you explain what this is?

2 A This is the letter that was sent to him after
3 the discharge of his bankruptcy.

4 Q And can you just please read paragraph 2?

5 A "We have been advised by our attorneys at the
6 Oregon Department of Justice that the remaining debt you
7 owe Portland State University is not discharged under the
8 US Bankruptcy Code as amended in 2005."

9 MS. SINNOTT: I have no further questions.
10

11 **CROSS EXAMINATION**

12 BY MR. JONES:

13 Q Hi, Ms. Looney.

14 A Hi.

15 Q So, I think we'll start off with PSU's exhibit
16 binder. And I think we'll just look back at those, what
17 have been referred to as different version of the RCAP.
18 And I believe we can just use that folder and look to
19 Exhibit A and K. But maybe not. I think we'll have to
20 use our binder, if you look, the different version of the
21 agreement would be at 16 and 1. I'm not going to ask
22 many questions about this. From your testimony, would
23 you agree that there's some differences in these
24 agreements, and somehow some of the data that's entered
25 into these agreements and some of the headers and some of

1 the footers can -- were manipulated at some point to
2 create these differences?

3 A In terms of the student specific data, yes.
4 Not --

5 Q And also the -- the headers, the footers, the -
6 - the format of the date, etcetera, that they were
7 somehow manipulated from -- in these two different
8 versions, from the database. Correct?

9 A Yeah, I mean, they're presented out of two
10 different databases.

11 Q Okay. So, and forgive me, perhaps I'm a bit
12 slow.

13 But I'm having trouble understanding why there
14 is an agreement with an e-signature from 2005 --

15 A Mm hm.

16 Q -- that was presented as the agreement that is
17 operative as to this 2010 tuition debt.

18 And the code on -- I'm looking for the -- yeah,
19 M, so Exhibit M. And you just answered some questions
20 about these documents with counsel.

21 So the 2007 RCAP, that seems to indicate that
22 there was an agreement that was assented to by Mr.
23 Soballe in 2007, but the only contract or agreement
24 that's been submitted that says it's the controlling
25 agreement has a e-signature from 2005.

1 A Correct.

2 Q So is it your understanding from that RCAP
3 2007-04 in Exhibit M that there would be another
4 agreement with a -- that he assented to that had an e-
5 signature or whatnot in 2007?

6 A That was my understanding when I -- when I
7 first pulled the information, yes.

8 Q That's not correct? That's not what that
9 means?

10 A I have been unable to get that document
11 produced.

12 Q So this would indicate that there is an
13 agreement that he assented to in 2007, but you can't
14 produce that document.

15 A Correct.

16 Q So are you still maintaining that the agreement
17 that was allegedly e-signed in 2005 is the agreement that
18 controls as to the 2010 tuition debt, although there may
19 be another agreement in 2007?

20 A Substantively, the -- the RCAP did not change
21 until 2010.

22 So this -- whether he agreed to it in 2005 or
23 2007, all that would be different would be the date and
24 the timestamp. It was still the same Revolving Charge
25 Account Agreement information.

1 Q Okay. But wouldn't you agree then, I mean, you
2 have produced, and PSU's has produced this agreement from
3 2005 with the e-signature, seemingly that is relevant
4 that they -- that there's an e-signature and a date that
5 he accepted it.

6 A Mm hm.

7 Q Right? But can't produce one from 2007. So
8 you're saying it doesn't -- it doesn't really matter that
9 PSU can't produce an agreement that has this e-signature
10 and a date that Mr. Soballe assented to it, but
11 nonetheless, submitted this 2005 agreement with the
12 signature?

13 THE COURT: Yeah, no, I didn't understand that
14 question at all.

15 MR. JONES: Okay. Okay.

16 THE COURT: So no.

17 MR. JONES: So --

18 THE COURT: She doesn't have the 2 -- 2007
19 agreement.

20 MR. JONES: I'm just --

21 THE COURT: Okay? So there's no question about
22 that.

23 MR. JONES: Okay.

24 Q (by Mr. Jones) Can I ask, would there have
25 been an e-signature submitted on the 2007 agreement that

1 would look the same as this 2005 agreement?

2 THE COURT: Yeah, you can ask that. That
3 question makes sense to me.

4 A Yes.

5 THE COURT: Previous one denied.

6 A There would have been.

7 Q Do you know how the e-signature is -- is
8 produced onto the RCAP?

9 A I do not.

10 Q Let's take another look at Exhibit A on this --
11 this 2005 RCAP.

12 Could you read just briefly number 3 under
13 "Agreement" on the first page?

14 A "This agreement is subject to the
15 Administrative Rules of Portland State University in
16 effect now or in effect when fees/charges are incurred."

17 Q Did I say 2? I meant 3.

18 A Oh, I'm sorry. "This agreement will remain in
19 effect as long as my account has an outstanding balance."

20 Q Thank you. And if we flip to page 2 of the
21 agreement, could you just read number 11?

22 A "Notification of changes. Portland State
23 University may amend these terms and conditions without
24 securing a new agreement. Portland State University will
25 notice -- notify student of any changes in interest,

1 charges or fees in advance of the change. If unpaid,
2 student is bound by the changes."

3 Q Okay. Would you agree that -- flipping back to
4 3, would you agree that number 3 is a pretty plain
5 statement that this 2005 agreement would remain in effect
6 as long as there was an outstanding balance?

7 A Yes.

8 Q So if Mr. Soballe did not have an outstanding
9 balance at any time after October 30th, 2005, became
10 current, then this agreement would not be in effect.

11 A Yes.

12 Q Thank you. I have one more thing on this
13 agreement. Sorry.

14 Back to page 2 and number 5, and I won't have
15 you read that. If you can just see where it says
16 "Billing Charge" and it says, "A \$5 billing charge will
17 be assessed on the next billing date if the total amount
18 due has not been paid during the grace period." Is that
19 correct?

20 A Yes.

21 Q So there's a \$5 billing charge.

22 Do you know if -- is a billing charge the same
23 thing to PSU as an account maintenance fee?

24 A Yes.

25 Q And sorry, back to 11. I think I didn't ask

1 you that. Are you aware of any documents or evidence of
2 PSU providing any notice of the change in terms of the
3 agreement, such as the change of the billing charge, for
4 example?

5 A They -- aside from being put on our website, I
6 am not aware of anything specific sent to any student.

7 Q Okay. And if I can, I'll have you flip to
8 Exhibit M again.

9 A Yes.

10 Q And this is essentially an account history --

11 A Correct.

12 Q -- correct, of Mr. Soballe, PSU's history.
13 Okay.

14 And we're just going to -- we've already
15 covered that -- that RCAP language there, of the 2007. I
16 think if we pan down a little bit, I think I'm going to
17 go to, actually page 2 of that exhibit. And we'll just
18 take a look at a few example lines. Line 371 and 365.

19 A Mm hm.

20 Q And do you see there, that's the account
21 maintenance fee, or what you've said PSU also refers to
22 as a -- as a billing charge?

23 A Mm hm.

24 Q And there's a 10 -- \$10 --

25 A Correct.

1 Q -- charge there on July 13th -- or July 16th,
2 2013. Yes?

3 A Correct.

4 Q And then in line 365, same thing, another date,
5 \$10 billing fee on May 16th, 2013?

6 A Yes.

7 MS. SINNOTT: Your Honor, I'm going to object
8 on relevance grounds.

9 MR. JONES: And Your Honor, I'm going to object
10 to the witness making eye contact fairly regularly with
11 her counsel. It's probably on accident, but I'm just --

12 THE COURT: She's allowed to have contact with
13 her counsel. Give me a break.

14 MR. JONES: She's -- from my point of view, it
15 appears that she's looking over there when there's a
16 pause in between her answer and the question. I'm sure
17 it's on accident. I'd just object to that.

18 THE COURT: Objection overruled. She can look
19 at her counsel. And so what is the relevance? That
20 there was a change.

21 MR. JONES: So -- so if I'm trying to
22 understand this correctly, if there's a change in the
23 fee, PSU's witnesses are now saying that maybe there was
24 this -- these multiple times that Mr. Soballe went onto
25 this website and clicked a box agreeing to terms and

1 conditions, although it can't produce an agreement
2 related to that besides 2005.

3 If -- if Mr. Soballe by clicking the box was
4 agreeing to the original agreement, which it appears it
5 does from the exhibits, each time he did that, then he
6 would be agreeing to the terms of that original
7 agreement, which was a \$5 billing fee.

8 So we're trying to present this evidence to --
9 to me, it calls into question, if he had assented to
10 these agreements over time, as late as 2015, long after
11 he was a student, and he was agreeing allegedly to the --
12 the blank old agreement that was in place that said it
13 had a \$5 billing fee, if that's the case, then why is PSU
14 charging a \$10 billing fee that wasn't in place at the
15 time. I think that's the relevance of it.

16 MS. SINNOTT: How does that go to whether this
17 is a student loan?

18 THE COURT: I don't know.

19 MR. JONES: Because whether it's a student
20 loan, one of the elements is that there has to be a valid
21 and enforceable agreement. And I think what we're
22 leading to here is whether there actually is agreement,
23 whether he assented to an agreement at all. PSU is
24 attempting to say he clicked on a box that there's no
25 record besides 2005, and this just goes to the weight of

1 whether that -- there is multiple agreements that are on
2 a later date. Which doesn't seem to make sense, if
3 there's a -- a \$10 fee if the agreement that he's
4 agreeing to is an old agreement when it was a \$5 fee.

5 THE COURT: Okay, point made.

6 MR. JONES: Thank you.

7 THE COURT: You can argue about relevance in
8 closing.

9 Q (by Mr. Jones) So I think, if we can flip to
10 page 8, same exhibit. Which is the last page.

11 A Mm hm.

12 Q It kind of goes reverse chronology here, so
13 we're kind of going to the -- to the first term that Mr.
14 Soballe registered for in 2005. And we see in the -- in
15 the left-hand column there, those are charges, and then
16 we see payments in the second column.

17 A Mm hm.

18 Q I mean, I think we'd have to go back to the
19 first page to actually see the -- the names of the
20 columns. But -- and we see that there was charges for
21 that first term in 2005, and then there's payments, and
22 then there's some more charges for the next term, and
23 then there's payments. And I believe it was your
24 testimony at your deposition, and I think we could look
25 at this form here and add up the numbers, but that Mr.

1 Soballe registered for classes in 2005, attended classes,
2 and then there was payments made from financial aid, or
3 from Mr. Soballe, and that his account was current. And
4 then he'd register for classes again. I think if we
5 looked at that form. So there was points where he would
6 owe money, the tuition was always paid from 2005 and on,
7 correct?

8 A Correct.

9 Q So I'm just going to have you take a look at
10 the billing statements.

11 THE COURT: Well, can we -- I have a couple of
12 questions about this document. Why is the balance always
13 zero?

14 THE WITNESS: So, right now his account is
15 sitting in write-off status, so we're not actively
16 collecting on it. So he's got holds on his account that
17 prevent transcripts or registration. But once -- since
18 we're not actively collecting on it, it doesn't have a
19 balance because we're not accruing fees on it. So it
20 just kind of lives in a -- in a write-off status. So
21 there -- there's nothing that would be outstanding on his
22 account.

23 THE COURT: Okay.

24 Q All right --

25 THE COURT: And -- wait. I'm -- okay, that's

1 all I had on this.

2 THE WITNESS: Okay.

3 Q (by Mr. Jones) All right, Ms. DuPont, we're
4 going to go to the billing statements, which is Exhibit
5 G.

6 A Mm hm.

7 Q I'm going to have you flip through those
8 billing statements, I guess the first one, and we'll see
9 up at the right-hand top on the statement date it says
10 August 16th, 2010?

11 A Yes.

12 Q This -- this is a statement that was allegedly
13 sent to Mr. Soballe.

14 A Yes.

15 Q Correct? And maybe if we could, I would also
16 have you flip to the Registration Guide, which is in
17 Exhibit H.

18 A Mm hm.

19 Q You can kind of look at that, because what I'm
20 trying to get to here is the -- the different dates when
21 there would be a percentage of the debt that would be
22 subtracted if the classes were dropped by the student at
23 that particular date.

24 So if -- if we look at Exhibit H, I think page
25 2 has that schedule for fall 2010.

1 A Correct.

2 Q So, and then if we can kind of flip back and
3 look at the statement from August 16th --

4 THE COURT: Wasn't that for a summer class?

5 A This would have been for summer term 2010.
6 Fall had not yet started.

7 Q For this -- for this class. Okay.

8 A Yes.

9 Q So let's -- let's go to September 20th
10 statement then. The next one, next page.

11 A Okay. Yes.

12 Q Okay. So these are charges here for --

13 A Fall term.

14 Q -- fall term.

15 A Mm hm. Plus these accruing interest and
16 billing fees on the summer balance.

17 Q Mm hm. And so if we look at that schedule --
18 so this -- this statement was sent September 20th.

19 A Mm hm.

20 Q And if we look at that schedule there, up until
21 October -- it looks like October 4th, if he would have
22 dropped classes, he would have been eligible for a 70
23 percent reduction.

24 A No. As -- through midnight of the 3rd, he
25 would have been eligible for 100 percent.

1 Q Through midnight of the 3rd.

2 A Yep. And as of the 4th, it was a 70 percent
3 refund.

4 Q Okay. So on -- on September 20th, he would
5 have been entitled still to a --

6 A 100 percent.

7 Q -- 100 percent reduction.

8 A Yes. The term hadn't even started yet.

9 Q Okay. And then if we pan down to the bottom --

10 A Mm hm.

11 Q -- we see there's no notes about dropping or
12 the deadline and other things. Is there anywhere there
13 that he would know that he would have been entitled to
14 100 percent refund? We see charges. Is there anything
15 on this statement that says where he would go to drop the
16 classes to receive the --

17 A No.

18 Q -- refund? Or what the --

19 A Not enough space.

20 Q Or that if he -- or that he would have been
21 entitled to 100 percent refund?

22 A No. That's why we have the Registration Guide.

23 Q Okay. And if we flip to the next statement,
24 October 18th.

25 A Mm hm.

1 Q So, it's my understanding from the schedule,
2 and maybe I'm wrong, that he would have been eligible for
3 a 20 percent reduction on the date of this statement if
4 he would have dropped classes before then?

5 A Yes. As of that specific date, yes.

6 Q And not to --

7 A Started the 20 percent.

8 Q -- not to be repetitive, but again, no
9 information about how to go about getting that 20 percent
10 reduction on those statements?

11 A No.

12 MR. JONES: No further questions.

13 MS. SINNOTT: I just have one follow-up
14 question.

15 THE COURT: Okay.

16

17 **REDIRECT EXAMINATION**

18 BY MS. SINNOTT:

19 Q Ms. Looney, earlier Mr. Jones asked whether you
20 agreed that data on the RCAP could be manipulated, I
21 think was the word that he used.

22 A Mm hm.

23 Q And I think you said yes, the student name and
24 signature could be manipulated.

25 You -- do you mean that the raw data could

1 change? Not that you yourself could go in and manipulate
2 the data in the data warehouse.

3 A Correct. Because I have -- it's a read-only
4 database, I have no ability to change any of the
5 information. It's just how the manipulation of how the
6 report appears could change some of that data.

7 Q Okay.

8 MS. SINNOTT: That's all I have.

9 THE COURT: So, I think you said that there
10 were amendments to the RCAP --

11 THE WITNESS: Mm hmm, correct.

12 THE COURT: -- in 2010.

13 THE WITNESS: Correct. We -- yeah. We have --

14 THE COURT: So what changes were made and when
15 were they made?

16 THE WITNESS: I do not have that on me, but we
17 have -- we have on occasions updated that form.

18 THE COURT: So sometime in 2010 the form was
19 updated.

20 THE WITNESS: Yes. Updated, and then they also
21 went into the OAM process. So how the acceptance
22 changed, as well.

23 THE COURT: So that's when the -- the pop-up
24 comes up?

25 THE WITNESS: No, the pop-up was coming before.

1 When it went into the OAM process in 2010 is when it
2 became part of the three documents that you accept every
3 six months.

4 Q (by Ms. Sinnott) But was it your
5 understanding that those two processes overlapped during
6 the time that Mr. Soballe would have registered for fall
7 2010?

8 A Yes.

9 Q So it was both the OAM process and the Banweb.

10 A Correct. For a period of about six months, I
11 believe.

12 Q But the agreement and terms and condition were
13 the same during that time.

14 A Correct.

15 THE COURT: And can you look at Exhibit C?

16 THE WITNESS: Yes.

17 THE COURT: That's what would have popped up,
18 right?

19 THE WITNESS: Right.

20 THE COURT: In 2010 --

21 THE WITNESS: Yep.

22 THE COURT: -- this is what would have popped
23 up.

24 THE WITNESS: Yes.

25 //

1 THE COURT: And in order to register, you have
2 to accept.

3 THE WITNESS: Yes.

4 THE COURT: Okay. Okay, thank you.

5 MS. SINNOTT: No further questions.

6 THE COURT: Can this witness be excused?

7 MS. SINNOTT: Yes.

8 THE COURT: All right.

9 MS. SINNOTT: I'd like to call Mr. Soballe. I
10 don't know how mechanically you want to do this, if you
11 want to go first.

12 MR. FULLER: Go ahead.

13 MS. SINNOTT: Okay.

14 MR. FULLER: No, that's fine.

15

16 **JENS PETER SOBALLE**

17 called as a witness by the Creditor PSU, having being
18 first duly sworn, was examined and testified as follows:

19 THE COURT: Please be seated, state your full
20 name and spell your last name for the record.

21 THE WITNESS: Jens Peter Soballe, last name is
22 S-o-b-a-s-in-boy-a-l-l-e.

23 THE COURT: All right.

24 //

25 //

CREDITOR PSU'S DIRECT EXAMINATION

1
2 BY MS. SINNOTT:

3 Q Good morning, Mr. Soballe. We're still barely
4 in the morning hours.

5 A Good morning.

6 Q Can you please turn to Exhibit F?

7 A Okay.

8 Q Page 4 of -- oh, let's see -- page 4 of 7,
9 please. And I'm looking at summer 2009 quarter, do you
10 see that down at the bottom right-hand corner?

11 A Yes.

12 Q And you see there's a General Chemistry III
13 listed?

14 A Mm hm.

15 Q And an X right next to that?

16 A Yes.

17 Q Did you attend that class?

18 A I couldn't tell you.

19 Q Well, during your deposition you said that you
20 had attended the class --

21 A Yeah.

22 Q -- and I can actually read to you what your
23 testimony was.

24 A Appears -- yeah, looking at it, it appears that
25 I probably did. I passed a lab for that -- that Gen Chem

1 III.

2 Q And I'll just quote for you from your
3 testimony. You said that you attended that class for the
4 whole term. Does that sound about right?

5 A Yeah.

6 Q Okay. Yet you received an X on that.

7 A Mm hmm.

8 Q Okay. Did you ever notify the Registrar or
9 Student Financial Services at PSU at any time during the
10 fall 2010 term that you were not attending those classes?

11 A As far as like written communication, or --

12 Q No, just communication. Did you tell them?

13 A I don't know if going on the Banweb website
14 would count as communication, but that's the only thing I
15 did.

16 Q Did you -- so you -- you didn't call, email or
17 go in person to the Registrar's Office or Student
18 Financial Services during that term.

19 A During fall of 2010, no.

20 Q Okay. So you said that you attempted to go on
21 Banweb and drop your classes, but there was a hold.

22 A Yes.

23 Q Do you recall what date you tried to do that?

24 A I do not recall what date I attempted. I know
25 that I attempted to drop the classes after I got

1 notification from FAFSA that I wouldn't be receiving any
2 more financial aid.

3 Q Is it possible that that would have been after
4 October 20th, 2010?

5 A I don't believe it was, I think it was before
6 that.

7 Q Do you have --

8 A I believe it was before I went to Haiti, is
9 when I tried.

10 Q But is it possible that it was after you got
11 back from Haiti?

12 A I suppose it's possible that my memory might be
13 faulted on the exact date, it was six years ago.

14 Q Okay. After you -- a hold was placed on your
15 account, and you tried, as you said, attempted to drop
16 online, did you ever go in person to the Registrar's
17 Office?

18 A No, I was out of the country until the
19 reduction period was over.

20 Q So it's safe to say you never went in person to
21 the Registrar's Office. Did you ever call the
22 Registrar's Office?

23 A No.

24 Q Did you ever email the Registrar's Office?

25 A Not in fall 2010.

1 Q Did you ever submit any petition to PSU to
2 obtain a retroactive refund of your tuition?

3 A No, I didn't know about that until these
4 proceedings occurred.

5 When I called the Registrar's Office after, I
6 never heard about it until the last two months probably.

7 Q Other than this proceeding, did you ever file
8 any sort of lawsuit against PSU to make a determination
9 about your debt to PSU?

10 A No, I just filed bankruptcy. I listed them as
11 a debtor, I believe.

12 MS. SINNOTT: Okay, I don't have any further
13 questions.

14

15 **DEBTOR'S DIRECT EXAMINATION**

16 BY MR. FULLER:

17 Q Mr. Soballe, when did you first become a
18 student at Portland State University?

19 A I believe 2005, fall of 2005.

20 Q And did you complete that term in fall 2005?

21 A Yes, I did.

22 Q Do you recall the status of your account
23 balance at the end of the term of fall 2005?

24 A It would have been paid in full.

25 Q And remind us, how long did you attend Portland

1 State University as a student?

2 A Well, if -- as of 2015, I -- ten years, I don't
3 know. 2010 was the last year that I attended any classes
4 at Portland State.

5 Q Do you recall the status of your account
6 balance by the end of your summer term of 2010?

7 A I had a few hundred dollars outstanding.

8 Q Okay. And you can't attend class if you owe
9 from the prior term, correct?

10 A You can -- you can attend class if you owe, but
11 if you don't register before they put the hold on your
12 account, you can't register for any more classes, and
13 then you wouldn't be able to attend.

14 Q So from fall 2005 to spring 2010, do you recall
15 the status of your account balance by the end of each
16 term?

17 A I believe it was always paid in full so I could
18 continue attending classes.

19 Q Did you ever attend any classes in the fall of
20 2010 at Portland State University?

21 A No, I did not.

22 Q Did you receive any credit for the fall 2010
23 term at Portland State University?

24 A No, I did not.

25 Q You explained earlier, but would you elaborate,

1 why didn't you attend?

2 A So, every year, fall term, you have to submit
3 your application for student loans. And I received a
4 determination from FAFSA that I would not be receiving
5 any more student loans, I wasn't eligible for any more
6 financial aid at that point. So I -- I wasn't going to
7 attend classes that I couldn't pay for.

8 And then also, I was working as the Caribbean
9 Regional Coordinator for an NGO at the time, and I was
10 working in Haiti often. Especially in fall of 2010.

11 Q Did you attempt to drop your fall 2010 classes?

12 A Yes, I did.

13 Q How did you attempt to drop the classes?

14 A I went on the Banweb student account, where I
15 typically would add or drop classes.

16 Q Do you recall if you were ever made aware that
17 there might have been other options available to drop
18 other than how you registered for them, which was online?

19 A No. When you attempt to drop the class, it
20 tells you that there's a registration hold on your
21 account, but it offers you no other information at that
22 time.

23 Q Would you please take out our pink binder, and
24 would you please turn to Exhibit 1?

25 A Okay.

1 Q Please look over Exhibit 1.

2 A Okay.

3 Q It's three pages, correct?

4 A I have two -- oh yeah, the -- yeah. Yes, three
5 pages.

6 Q Do you recognize Exhibit 1?

7 A Yes, I do.

8 Q What is it?

9 A It was an email sent to me by Megan Looney at
10 Portland State, and she sent me the RCAP that I had
11 requested per our conversation.

12 Q And is the RCAP that you received the second
13 two pages of Exhibit 2?

14 A Yes.

15 Q Prior to requesting this agreement from Ms.
16 Looney, do you ever recall having seen it before?

17 A No, I have never seen it before. Which was
18 exactly the reason I requested it. On the phone call,
19 she had told me that my debt was considered a student
20 loan because of the RCAP that I had signed, and that's
21 why it wasn't discharged in bankruptcy.

22 At which point, I requested her to send me a
23 copy of the agreement, because I never recalled signing
24 it.

25 Q Do you ever recall having seen or accepted this

1 agreement online?

2 A No, I just have the record that she sent me.
3 That was the only reason I knew about this agreement at
4 all.

5 Q Do you recall accepting this agreement by
6 clicking a box online?

7 A No.

8 Q Did you ever receive a notice from Portland
9 State University that your billing charge had increased
10 from \$5 to \$10?

11 A Not to my knowledge.

12 Q Did you ever receive any student aid funds
13 directly from Portland State University?

14 A No.

15 Q Did Portland State University refer your
16 account to an outside collection agency after you filed
17 bankruptcy?

18 A After the discharge was complete, yes.

19 Q There was some talk of trans -- transcripts
20 earlier. I want to be clear, after you filed bankruptcy
21 and received your discharge, did Portland State
22 University ever refuse to provide you your transcripts?

23 A Repeatedly.

24 Q No further questions, Mr. Soballe.

25 //

1 THE COURT: So, is this your direct, as well?

2 MR. FULLER: That's my direct, Your Honor.

3 THE COURT: Okay.

4 MS. SINNOTT: So, I have a couple follow-up.

5 THE COURT: Yes.

6

7 **CREDITOR PSU'S CROSS EXAMINATION**

8 BY MS. SINNOTT

9 Q So you just testified that you don't -- that
10 you never clicked a box to agree to the RCAP, is that
11 correct?

12 A I don't recall ever clicking on a box to accept
13 the RCAP, no.

14 Q So is it possible that you did click the box,
15 you just don't remember now?

16 A Eleven years ago, yes, it's possible that I
17 don't remember something that happened eleven years ago.

18 Q What about six years ago?

19 A It's a long time. It's a lot of days. There's
20 a lot of clicky boxes in our world nowadays.

21 Q Absolutely, I agree.

22 You testified on numerous occasions that PSU
23 has refused to provide your transcripts. Have there been
24 circumstances where PSU has provided you transcripts,
25 despite your hold?

1 A No. That is not true. No, I have not ever
2 received my transcripts from Portland State.

3 Q Has Portland State sent your transcripts to
4 your employers per your request?

5 A They have after repeated phone calls, yes.

6 Q Okay.

7 MS. SINNOTT: No further questions.

8 THE COURT: Any follow-up?

9 MR. FULLER: No.

10 THE COURT: You may step down, thank you. Oh
11 wait, I -- I have a question.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: When did you go to Haiti? And why
14 did you go to Haiti?

15 THE WITNESS: There was an earthquake in Haiti
16 that leveled Port-au-Prince.

17 THE COURT: Right, in January of 2010 --

18 THE WITNESS: Correct. So I --

19 THE COURT: -- right? And so when did you go?

20 THE WITNESS: -- I went two weeks after the
21 earthquake originally. I was directing a medical clinic
22 in Port-au-Prince. And then I returned and I went four
23 more times that year, I believe. And I was in Haiti from
24 October 9th through the 24th, on that particular
25 instance.

1 THE COURT: Okay. Did you go to Haiti again
2 after that?

3 THE WITNESS: Yes.

4 THE COURT: When?

5 THE WITNESS: I have to check my passport. I
6 can do that, I brought it with me.

7 (Pause)

8 March of 2011 and February of 2011, would have
9 been the next time.

10 THE COURT: Okay. All right, thank you.

11 THE WITNESS: Thank you.

12 THE COURT: Do you have any further witnesses?

13 MS. SINNOTT: I don't.

14 MR. FULLER: No, Your Honor.

15 THE COURT: You're done? Okay. So what I
16 suggest is, we have to be out of here at noon, I'm sorry.
17 So what I suggest is that we break until -- when's your
18 hearing? 1:30?

19 MR. FULLER: 1:30.

20 THE COURT: Let's break until 2, and you can
21 come back and do closing at 2. All right?

22 MR. FULLER: Thank you.

23 MS. SINNOTT: Thank you, sounds good.

24 THE COURT: All right.

25 (Recess)

1 THE CLERK: Please rise. Court is once again
2 in session, the Honorable Trish M. Brown presiding.
3 Please be seated.

4 THE COURT: Go ahead.

5 MS. SINNOTT: Should I go? Okay.

6 THE COURT: One-two-three go.

7 MS. SINNOTT: And do you mind if I stay seated?

8 THE COURT: No, I do not.

9 MS. SINNOTT: Thank you, Your Honor.

10

11 **CREDITOR PSU'S CLOSING ARGUMENT**

12 MS. SINNOTT: Your Honor, under 11 USC
13 523(a)(8)(A)(i), PSU must prove two things.

14 The first is that PSU is a governmental unit.
15 That fact has been stipulated to, I don't think that's in
16 dispute.

17 The second thing is that there was a contract
18 to which Debtor agreed -- the contract to which Debtor
19 agreed was an educational loan.

20 The evidence has shown that Mr. Soballe agreed
21 to the RCAP in at least two different ways in the summer
22 of 2010 preceding his registration for fall 2010 term.
23 First, before he was allowed to register online in the
24 Banweb system, he was required to quote-unquote "click
25 the box" as evidenced in Exhibit C, and second, before he

1 was allowed to change his password in OAM, he was
2 required to accept the RCAP terms. This is in addition
3 to the times when he accepted the RCAP in previous terms.

4 Mr. Soballe has offered no evidence to the
5 contrary, that he has not -- that he did not click the
6 box and did not agree to the RCAP. He simply says he
7 does not remember doing so. So there should be no
8 question that Mr. Soballe agreed to the RCAP.

9 The question is whether the RCAP is a student
10 loan -- pardon me, an educational loan. If you review
11 the RCAP that was linked to the click box, it shows that
12 the RCAP has all the ear-markings of a loan. Because
13 there's no definition for educational loan in the
14 Bankruptcy Code, courts, including this circuit, have
15 adopted a relatively broad definition of "loan".

16 So it's a pretty flexible definition, and in
17 this case it's clearly a loan.

18 There are -- if you look at the terms and
19 conditions, there are required payments, there are
20 deferred payments, there are due dates, there are late
21 payment fees.

22 THE COURT: Where -- where is all that?

23 MS. SINNOTT: I'm sorry, in Exhibit D, page 2.
24 And this is identical to Exhibit A and Exhibit K.

25 THE COURT: Okay.

1 MS. SINNOTT: So there is -- there are deferred
2 chargements -- I'm sorry, deferred charges that are paid
3 in payments throughout the term. So all payments must be
4 paid on or before the designated due date. There are
5 late payment fees for not making the payments on time.
6 There are interest charges for -- on amounts that were
7 not paid within the grace period. There are billing
8 charges. There are collection costs.

9 In short, this document -- this RCAP in its
10 four corners has all of the ear-markings of a loan.
11 Because Mr. Soballe agreed to this, and because his
12 obligation was governed by this, there is no question
13 that his obligation to PSU is an educational loan.

14 The Debtor argues that there was not an
15 educational loan because he never attended classes and
16 therefore he never received an "educational benefit".
17 Setting aside the facts, which are he could have dropped
18 his classes but he didn't, the hold was not on his
19 account until well after the deadlines had -- had passed,
20 he could have gone to the Registrar, he could have called
21 and asked questions about how he could drop his classes
22 outside of the hold. He never did so.

23 Regardless of that, it doesn't matter whether
24 he attended or he didn't attend his class. The weight of
25 authority looks at the purpose test versus the use test

1 when considering whether -- whether and educational loan
2 is nondischargeable. It does not matter whether or how a
3 debtor used the funds or the amounts advanced under a
4 loan to determine whether it's an educational loan. What
5 matters is what the purpose of the loan was for. And
6 that's established, if you read the *In re Maas* case, M-a-
7 a-s, 497 BR 863, it has a pretty good outline of what the
8 purpose test is versus use test. It's -- it's
9 established that that test is what governs.

10 If the Court were to accept Debtor's argument
11 that because he never attended, it's not an educational
12 loan, it would be accepting the use test, because it
13 would look at, well, how was the loan used? In this
14 case, it was not used by his choice. He could have
15 attended all term. His spot was open all term. But that
16 is not the right analysis. And for this Court to adopt
17 that analysis would go against the purpose test.

18 The cases that were cited in Debtor's trial
19 brief where the Court held there was no student loan are
20 distinguishable.

21 So the first one would be the *In re Hawkins*
22 case, so that's the 317 BR 104, and that's a Ninth
23 Circuit case from 2004.

24 In that case, the debtor had signed up for med
25 school in Ohio, had agreed to -- had gotten reduced

1 tuition in -- in exchange for agreeing to stay in Ohio
2 for five years after graduating, as a way to keep
3 students in the -- in the state so they can maintain
4 medical professionals there.

5 There was an agreement that the debtor signed
6 called a Contract of Admission. And in that agreement,
7 the repercussions for not staying in Ohio for five years
8 was that the debtor was required to pay a form of
9 liquidated damages where they would look at what the cost
10 of subsidizing a medical student at the time of the
11 breach was, and they would charge that to the debtor.

12 In that case, the Court found that that was not
13 a student loan, and it was dischargeable because there
14 was no loan. It had nothing to do deferred payments or
15 an extension of credit, it was a liquidated damages
16 provision.

17 And I have the Black's Law Dictionary
18 definition of "liquidated damages". I think there is a
19 little bit of a misunderstanding about what that means.
20 Debtor's counsel has inferred -- or implied that in this
21 case there was liquidated damages because he never
22 attended. But really what liquidated damages is, is it's
23 a measure of damages that is not actual damages. In this
24 case, there's actual damages because you look at what did
25 he owe the University. That's what their damages were.

1 That's how -- that was the measure of damages.

2 Liquidated damages is -- and you'll have to
3 forgive me for reading from this, but it is, "If the
4 parties to a contract have properly agreed on liquidated
5 damages, the sum fixed is the measure of damages for a
6 breach, whether it exceeds or falls short of the actual
7 damages." So it's a different analysis, it's a different
8 computation.

9 In the *In re Hawkins* case, that computation was
10 what it would cost for another med student's subsidy at
11 the time of the breach. It wasn't how much did that
12 debtor gain from entering into this admission agreement
13 as actual damages. So it's -- it's distinguishable.
14 It's just completely different from this situation.

15 Another case that I want to discuss is the
16 *Shojayi* case, *In re Shojayi*, I don't know if I'm
17 pronouncing that properly, but it's 515 BR 329 (D. Kan.
18 2014). Debtor cited this in his trial brief with a
19 parenthetical that said the Court held that there was no
20 student loan when the -- the student never attended
21 class.

22 Well, that case had nothing to do with whether
23 the student attended classes or not. And I think that
24 that's -- that parenthetical is misleading. So I want to
25 make sure that it's clear to the Court what that case

1 actually was about.

2 So, in that case, the -- it was a -- an
3 elementary school, and the parents for the elementary-age
4 students had agreed to a -- what was it called --
5 enrollment contract.

6 So basically they said, "We're going to enroll
7 and we promise to pay tuition." Tuition was due in
8 advance, however.

9 So it was never that the school extended credit
10 to the parents. The school just said, "You must pay in
11 advance. And if you don't, there were some
12 repercussions." There was no -- nothing about deferred
13 payments.

14 So the Court said, "Well, this isn't really a
15 loan. They didn't extend credit. It was just you agree
16 that you're going to pay a tuition in advance." And it
17 had nothing at all to do with whether the students
18 actually attended class or not. So, just want to clarify
19 that case, the parenthetical cited in that -- in their
20 brief is not correct. Or at least is not -- is -- is
21 somewhat misleading.

22 Other cases -- and I won't go through all of
23 them -- but other cases that have held that -- that
24 agreements are not student loans generally look at timing
25 of the agreement. So if the agreement is entered into

1 after the obligation is incurred, those are generally not
2 considered educational loans. It has to precede the
3 agreement. In this case, we have that.

4 I'm sorry, the agreement has to precede the
5 attendance at the school. Or they have some other
6 measure of damages, like liquidated damages, which we
7 don't have here.

8 So, finally, you know, you're well familiar
9 with *In re McKay*, it was your case, went to the Ninth
10 Circuit.

11 The Debtor's lawyers are going to make a big
12 deal of one specific line in that case about how the --
13 the amount of the loan has to be the actual benefit
14 received. I -- I think that they're taking that
15 statement out of context -- context. I think what the
16 issue was, was the loan itself didn't have an amount
17 listed in it, so the parties fought over, "Well, it
18 doesn't have this amount listed. It's not a loan if it
19 doesn't have an amount listed." And the courts -- all
20 three of the courts, you, the District Court and the
21 Ninth Circuit, said, "Well, that doesn't really matter,
22 because you can look to the tuition schedules and figure
23 out what it is that the debtor owes." So that was not
24 dispositive. And I don't think that because that
25 specific sentence is in the case, it changes the analysis

1 here. I still think we have to look at the purpose test
2 not the use test. And I don't think that it matters
3 whether he attended class by his own choosing.

4 The other case that they're going to talk about
5 is *In re Johnson*.

6 Again, there is for me an unfortunate sentence
7 in there that says that the debtor in that case -- in
8 that case the Court held that it was a student loan, but
9 they said the debtor agreed to pay tuition in advance of
10 starting and then drew upon the line of credit by his
11 attendance to the class. That was just one piece of many
12 pieces of that paragraph. It wasn't the only thing that
13 the Court was looking at, whether he actually attended,
14 it was just one of the reasons why the Court said, "Well,
15 this is a loan, and I'm going to have -- I'm going to
16 give an expansive reading of what 'loan' means."

17 So, that's all I have. Do you have any
18 questions?

19 THE COURT: No, I don't.

20

21 **DEBTOR'S CLOSING ARGUMENTS**

22 MR. JONES: So I'm going to start off by just
23 going back to the beginning, in the opening, in a few
24 sentence of why -- what Debtor thinks are the key issues
25 here.

1 So on 523(a)(8)(A)(i), this debt must be
2 considered a loan in order to be held nondischargeable.

3 In the Ninth Circuit -- in this Court and in
4 the Ninth Circuit, we have *McKay* and we know that the
5 definition of loan has been extended to include some
6 tuition debts, or deferred tuition debts, where there's
7 an agreement between the student and the creditor setting
8 forth the terms and conditions that's effective as to
9 that particular debt, including certain terms and
10 conditions like the date certain for repayment, and (3)
11 where there's an actual benefit received by the debtor
12 resulting from the debt.

13 And I think that's clear in the case law, and
14 I'll talk more about that.

15 So to summarize, we think the central issues
16 are, is there a valid and enforceable agreement that
17 pertains to the 2010 tuition debt?

18 And the second question, did Mr. Soballe
19 receive an actual benefit from the tuition debt?

20 And I think the evidence presented here today
21 clearly shows that the -- the answer to both of these
22 questions is no, and thus the tuition debt to PSU is
23 discharged in Mr. Soballe's bankruptcy.

24 So starting off with whether there's a valid
25 enforceable agreement that was effective as to the 2010

1 tuition debt.

2 PSU originally presented evidence to this Court
3 of a 2005 agreement that it felt was very relevant, that
4 had an e-signature and a particular date showing when Mr.
5 Soballe assented to this agreement.

6 Since submitting that 2005 agreement, discovery
7 and -- and testimony here today has shown that actually,
8 well maybe there was multiple times throughout his
9 relationship with PSU that he had assented to a blank
10 version, at least, of a -- what they call an RCAP, or an
11 agreement.

12 So how can they show that assent to that 2005
13 agreement? We -- we have a flowchart and -- and
14 apparently Mr. Soballe was required to click on a box
15 that says he agreed to certain terms and conditions, and
16 then there was another hyperlink that -- that said "click
17 here" that he would go to the actual agreement and read
18 those terms if he so chose.

19 And so PSU submitted this actual e-signed
20 document, which I think is very unclear how the e-
21 signature actually is manifested on the document, how the
22 date is manifested. I don't think there's real evidence
23 of what that was or how that came to be. We have two
24 different versions that were presented of this agreement,
25 which I understand that the -- the Court does not believe

1 are substantive, and we would agree with that.

2 But I think the relevance of those two
3 different versions is that -- that we are supposed to
4 believe that they have met their burden of proof that he
5 assented -- that Mr. Soballe assented to the agreement by
6 showing what this e-signature is, but yet we have two
7 different versions of this document that came from the
8 database that have -- whether they be substantive
9 differences in the terms and conditions, I think goes to
10 show that this document itself and how it was stored and
11 what we see here isn't -- isn't trustworthy, or should be
12 given little weight in terms of Mr. Soballe assenting to
13 that agreement in 2005.

14 In terms of the other alleged agreements or
15 times that he "clicked the box" so to speak, when he
16 changed his password and was then agreeing to another
17 agreement, that would supplant the -- the earlier
18 agreement.

19 And we have PSU stating that as late as 2015,
20 just last year, five years after he was a student, that
21 he was agreeing to a blank RCAP agreement. Which -- and
22 even reading through the language of the RCAP agreement,
23 any sensible reading of that, if a -- if a student were
24 to look at that, you'd be agreeing to something when you
25 haven't registered for classes in -- in five years.

1 Additionally, this copy of the agreement still
2 states the old billing charges of -- of \$5. So if he's
3 agreeing in 2015 to this old agreement of \$5, why was he
4 being charged \$10?

5 I think as I said earlier, that goes to show
6 that they have taken their burden very lightly to show
7 that there was an agreement formed and that Mr. Soballe
8 assented to that agreement. And they've just simply
9 produced one agreement that clearly doesn't control --
10 they concede it doesn't control, from 2005. They can't
11 produce any other agreement. There may have been an
12 agreement in 2007 that actually he signed, but they
13 weren't able to produce that. He may have clicked on the
14 box, you know, five or seven times since then, I think if
15 I could go back and count, as late as 2015, and maybe
16 those are the agreements that control.

17 They've stated that the agreement was amended
18 sometime in 2010. They haven't produced that agreement.
19 But yet if he agreed to this agreement by clicking on the
20 box as late as 2015, that agreement was not even before
21 the Court of what the terms and conditions of that
22 agreement are.

23 So it's Debtor's position that PSU simply
24 hasn't met its burden that Mr. Soballe assented to any of
25 these RCAP agreements.

1 And what we do know from *McKay*, going back to
2 those -- to those elements, is that there has to be a
3 valid and enforceable agreement. And they haven't met
4 their burden. If there's no agreement, then it's not a
5 loan.

6 In terms of the definition of loan, as I said,
7 it's -- it's clear that this Court and the District Court
8 and the Ninth Circuit and other courts have expanded the
9 definition of a loan. A traditional loan, of course, is
10 when there's money exchange hands. That, you know, a
11 creditor agrees to -- to give a loan of \$20,000 and
12 either that goes to the university or it goes to the
13 student and he pays his educational expenses with that.

14 THE COURT: But, if that were true, you could
15 never have a loan that was made by a university, right?
16 You're not arguing that, are you?

17 MR. JONES: No, I'm -- I'm not actually. I
18 think that we -- we concede that there -- there are some
19 times that a -- a tuition debt like this could be a loan.
20 But those parameters and those elements necessary for it
21 to be a loan are exactly that, they're necessary. Right?
22 We need to have this agreement with those definite terms,
23 right? If we don't have that, then it can't be a loan.

24 And the -- the actual benefit received, I think
25 is just simply clear. Opposing counsel points to those

1 cases says, "That wasn't that issue in that case." Well,
2 no, it wasn't, because in each of those cases, including
3 in this Court, a finding was made that the student used
4 the account.

5 And -- and as far as *McKay*, the account was
6 actually -- it could be used for all sorts of things
7 including, you know, tuition, for books, for vending
8 machines, for dining and for meals. And the student did
9 use that account.

10 So of course it wasn't an issue, that wasn't
11 the exact issue decided in *McKay*. Nor was it the issue
12 that was decided in *Johnson*, nor was it the issue that
13 was decided in *Hawkins*, because the findings were all
14 clearly made.

15 In *Hawk* -- in *Hawkins*, she had received her
16 medical -- medical degree. There was no argument that
17 she didn't get the training.

18 In *McKay*, it was clear that the -- that *McKay*
19 had used the account for all sorts of things, tuition,
20 books and food and -- and whatnot. And the same as in
21 *Johnson*.

22 And so, yes, the Court didn't decide it on that
23 issue because it wasn't present. But nonetheless, it is
24 a necessary element. And I think common sense tells us
25 why it's a necessary element. Because although that

1 definition of "loan" has been extended to say -- to a
2 tuition debt where no money exchanged hands because
3 you're agreeing to pay for something, for some services
4 at a later date.

5 If you take out that final pillar there, that
6 pillar of actual benefit, then it stretches the
7 definition of "loan" beyond any tenable meaning
8 whatsoever. It would be -- it would give it more
9 protection than a -- than a traditional loan would have.
10 Because the actual benefit received and the consideration
11 for a loan is that \$20,000 going from the creditor to the
12 -- to the university or to the student.

13 If that \$20,000 never gets paid anywhere then
14 there's no loan.

15 And -- and if you take that pillar of having an
16 actual benefit out of this expanded definition of loan,
17 then it's just simply not a loan. And that's why the
18 court -- the various courts that have decided this made
19 sure to make findings that there was an actual benefit
20 received in order to be considered a loan.

21 I think maybe an analogy -- a common analogy
22 would be that if Mr. Fuller and I agreed that, you know,
23 I'd rent his office space out for \$100 on some day for an
24 hour, right? And we had an agreement to do so. And then
25 I never show up, I never use his office space. Mr.

1 Fuller uses -- uses the office space, and then he comes
2 and he says, "Mr. Jones, I loaned you \$100. You owe me
3 \$100 because I loaned you \$100." Fine, there may be a --
4 a breach of contract there because I didn't show up, and
5 it said if I didn't that I would be charged \$100. But if
6 he used his office, there's -- there's no way that that
7 can be considered a loan because there was actually no
8 benefit received. That's the importance of the actual
9 benefit received.

10 Then opposing counsel refers to educational
11 benefit.

12 I think those cases that she's citing, if I'm
13 correct, are -- are not addressing this issue of actual
14 benefit when we're talking about the definition of a
15 loan. Just, in those cases, the student, you know, went
16 and got the -- the education -- they're arguing that
17 there's no educational benefit, meaning it was -- it was
18 useless to them. This is a separate thing here, this is
19 just this element of actual benefit when we're talking
20 about where no money exchanged hands and there's a
21 deferred agreement to pay tuition later.

22 And the evidence has shown, Mr. Soballe
23 testified that he -- he did not even attend one single
24 class. He attempted to drop those classes online but it
25 was difficult for him to do so. Because of the

1 circumstances and also because, quite simply, of all of
2 the statements and bills and such that Mr. Soballe
3 received, it was never made clear to him that there was
4 another way to -- to drop classes.

5 And even if he would been made aware of that,
6 then it -- it seems pretty clear that the -- the two
7 different forms that he would have had to fill out, they
8 say right on there that they have to be returned in
9 person. So he would've actually had to be here.

10 Now I don't think that -- we're not arguing
11 that really a loss to -- an economic loss to PSU is
12 really relevant at all, because it's an actual benefit
13 received by Mr. Soballe, and there clearly was no
14 benefit. He got no credit from the classes. He didn't
15 attend the classes.

16 In fact, it's been nothing but a detriment to
17 him, not a benefit. He has been -- PSU has been pursuing
18 this debt from him, they've garnished his tax returns.
19 He's had trouble getting transcripts. I don't see that
20 there's any way or any facts here that can meet that
21 element where Mr. Soballe received an actual benefit in
22 order for this to be a loan.

23 And I think to -- to not have that element in
24 here really -- really defies logic as to what the
25 definition of "loan" is, even under -- under *McKay*, under

1 *Johnson*.

2 And opposing counsel did point out the -- the
3 troubling sentences, as she called them, but I don't see
4 them so much as troubling as actually just the law there
5 and the importance of those elements. And maybe I'll
6 just read a few of them, although she -- she covered them
7 pretty -- pretty well.

8 So in *McKay*, the sentence is, "The amount due
9 on the loan must reflect the amount of the benefit
10 received."

11 In *Hawkins*, where it says, "In order to fall
12 within the definition of a nondischargeable debt under §
13 523(a)(8), the loan instrument must sufficiently
14 articulate definite repayment terms and the repayment
15 obligation must reflect the value of the benefit actually
16 received."

17 In *Johnson*, which the Ninth Circuit in *McKay*
18 relied on heavily as -- as persuasive authority, the
19 sentence that opposing counsel said was troubling says
20 quite clearly that, "The debtor signed a promissory note
21 to evidence her debt. By allowing Johnson to attend
22 classes without re -- prepayment, the College was, in
23 effect, 'advancing' funds or credits to Johnson's student
24 account. Johnson drew upon these advances through
25 immediate class attendance." So therefore, it is

1 immaterial that no money actually exchanged hands.

2 That underscores the importance of that element
3 of the actual benefit when we're not talking about a
4 traditional loan. When we're just talking about an
5 agreement to pay something later. Congress could have
6 very well used -- when they amended the Bankruptcy Code,
7 they could have used the word "student debt." They
8 didn't use the word "student debt." They -- in this
9 particular case, we now show it's got to be a loan. That
10 was an intentional choice of Congress. And although that
11 definition has been expanded to include situations when
12 money changed hands, it was still very important that
13 that -- that element of there's an actual benefit
14 received is there in order to determine that it's a loan.

15 So to conclude, because PSU has not met its
16 burden to show that Mr. Soballe assented to really any
17 agreement, that is specifically an agreement that was in
18 effect at the time of the 2010 classes -- which, by the
19 way, I skipped over a point in the -- the actual 2005
20 agreement clearly stating on its face that the agreement
21 would no longer be in effect after there was no
22 outstanding account balance. Which there was -- there
23 were many times throughout since 2005 there was no
24 account balance. He had a zero account balance up until
25 2010. So clearly, the 2005 agreement can't possibly

1 control as to the 2010 debt.

2 THE COURT: Well, what about the language in
3 the -- in the Registration Guide that says, "Completely
4 dropping all courses does not cancel a student's
5 obligation to pay a student loan or the balance of a
6 revolving charge account." And I'm looking on page 18.

7 MR. JONES: Of the -- in the Registration
8 Guide?

9 THE COURT: H, right.

10 MR. JONES: So one, there's absolutely no
11 evidence that, I mean, this was even given to students,
12 that he would have ever even read this. I mean, it's
13 available at the bookstore or online. So there's no
14 evidence of that. But what page, Your Honor?

15 THE COURT: 18.

16 MR. JONES: So you're saying it references the
17 --

18 THE COURT: "Dropping all courses" -- I'm
19 looking at the top.

20 MR. JONES: All right.

21 THE COURT: "Students with outstanding" -- so
22 the very first sentence.

23 MR. JONES: Mm hm.

24 THE COURT: "Completely dropping all courses
25 does not cancel a student's obligation to pay a student

1 loan or the balance of a revolving charge account."

2 MR. JONES: Mm hm. I -- I actually think that
3 the -- I don't understand that sentence myself, because
4 we -- we know from their testimony that if -- if students
5 were to drop courses at least for that term, up until a
6 certain date there a hundred percent refund.

7 THE COURT: Yeah, and then there's -- tuition
8 refund policy is right under that.

9 MR. JONES: Yeah. Right. But yet on this --

10 THE COURT: Right, but you're -- but it seems
11 to me that at least he was on notice he needed to do
12 something more than just attempt one place.

13 MR. JONES: So if -- if what I understand the
14 argument is by -- it's relevant to determine whether it's
15 a loan whether he made sufficient efforts to -- to drop
16 the classes. I mean, I don't --

17 THE COURT: All right, I'm just wondering if
18 that's -- to me that's sort of relevant, he didn't do
19 much to sort of try and take care of this.

20 MR. JONES: Again, I think that -- that's in
21 our brief and we're arguing that because opposing counsel
22 is going out of their way to argue that. I think that,
23 you know, to -- to whatever extent it's relevant, he
24 tried to drop online, that's how he registered, there's
25 no indication he would have ever actually read this

1 Registration Guide, that he was ever even provided with
2 one in the first place.

3 And still, I mean, with all this language in
4 this agreement, there's many pages of it, it doesn't say
5 how to actually drop -- there's a lot about how to
6 register for the classes and what you're going to owe and
7 what fees you're going to owe and -- and things like
8 that, but there's nothing in here to say, you know,
9 "We're going to put a hold on your account. If we do,
10 this is, you know, go into the registration's office,
11 there's these forms." They could have put the forms in
12 here, how to drop the classes.

13 I think the point is, is they -- they're kind
14 of hiding the ball on -- in terms of making it easy for
15 someone to drop classes.

16 As soon as they owe any money, essentially,
17 they -- they put a hold on there so you can't easily drop
18 their -- drop the classes, making it more difficult,
19 making it more likely that a student like Mr. Soballe
20 wouldn't be able to drop the classes in time to get a
21 refund.

22 And I say refund in quotes, because, you know,
23 really it's just a reduction in the debt that PSU is
24 going to pursue from them. There's no money that's going
25 to be given back to -- to them based upon this. Because

1 the argument is, it's not really a loan. They set it up
2 to look like a loan, because 523(a) says it's got to be a
3 loan.

4 But, you know, the evidence shows that when a
5 student owes any money, they're not going to be allowed
6 to register for classes.

7 That happened with Mr. Soballe because I think
8 he registered early, he was allowed to register for a
9 term when he owed a couple hundred bucks from the term
10 before.

11 Otherwise, they would have shut him -- shut him
12 down and he wouldn't have been able to attend any
13 classes.

14 It's not -- it's not really a loan. It's a
15 tuition debt that they want to make sure that they're
16 able to pursue when people file bankruptcy.

17 And if we look at those -- the Revolving --
18 it's called a Revolving Charge Account Agreement, but
19 they can't charge anything on it really. If we look at
20 the agreements in -- in *McKay*, that's a revolving charge
21 account agreement. The student could go use this thing
22 to -- to charge tuition and books and food and such, and
23 they did.

24 And again, the courts made a showing, and that
25 was an important showing in those cases. The reason it

1 wasn't an issue is because it clearly, they received an
2 actual benefit from it.

3 But really, this is nothing more than a -- than
4 a one-term debt that we owe to PSU, and -- and -- called
5 a Revolving Charge Account Agreement, so that they can
6 try to meet the definition of a loan. And I think the
7 facts in this case, we can see that.

8 I mean, I think the law is quite clear about
9 it. This Court has decided that, the Ninth Circuit,
10 that, you know, an extended tuition deferment, that can
11 be a loan. But those -- it's very important that each of
12 those elements are met, or we're just extending that
13 definition of loan far too broadly and it just wouldn't
14 make any sense anymore. There's actually no
15 consideration then for it to be, it had more protection
16 than an -- than an actual loan, where money exchanged
17 hands.

18 THE COURT: Okay. Well, I'm not going to rule
19 from the bench. I know that is my normal practice, but I
20 am not going to do that today. I may call you back or I
21 may issue a written opinion.

22 I know you had some attempts at settlement. I
23 think you both have risks. I think there's a good reason
24 to attempt to settle this again.

25 And I will tell you that I am going out of the

1 country next Wednesday, and I will be gone for the better
2 part of -- well, I'll be gone more than two weeks, and
3 back for a very short period of time, and then out of the
4 country again. So it's unlikely that you're going to get
5 a decision for the next month.

6 MR. JONES: Where are you going?

7 THE COURT: Ecuador and Peru.

8 MR. JONES: Mm.

9 THE COURT: For a momentous birthday. And then
10 Germany with my assistant, who has qualified for the
11 Veteran World Championships in Fencing, and I am going as
12 her Sherpa.

13 MS. SINNOTT: Your Honor, before we adjourn,
14 can I just address three points very quickly from his --

15 THE COURT: Okay.

16 MS. SINNOTT: I will be so fast.

17 The first one, I just want to make sure that
18 the record is clear that PSU has met its burden on
19 proving that an agreement exists. And it's not through
20 the 2005 exhibit, but it's through the data that is in
21 Exhibits E and B, as put on the record through Ms.
22 Powell's testimony.

23 The second thing I want to address is that the
24 Debtor did receive an actual benefit from this extension
25 of credit, and the benefit was that he was permitted to

1 register for classes and allowed to attend them all term.
2 He chose not to.

3 And if you look at the language in the *McKay*
4 case from the District Court, the Court noted that in
5 that case the educational benefit to debtor was that she
6 could start paying classes -- could start classes without
7 paying tuition up front. That happened here, as well.
8 He chose not to attend, but he could have attended.

9 The one last thing I want to address is --

10 THE COURT: I'm kind of grumpy about --

11 MS. SINNOTT: I'm sorry.

12 THE COURT: Just to let you know, I'm kind of
13 grumpy about the fact that he couldn't withdraw online.
14 Even though he could sign up online, he couldn't withdraw
15 online. And there's -- I don't know, I'm going to look,
16 that's one of the reasons why I'm not ruling from the
17 bench, but there's like not sort of explicit instructions
18 about, "Okay, you want to -- you want to not come, you
19 need to do X, Y or Z." And yes, I get that he could have
20 gone in, and I get that he could have sent an email. But
21 that's not very explicit anywhere, even in the language
22 that I read from -- from the -- from, you know, dropping
23 courses or whatever, right?

24 If he got frozen out of the system because he
25 owed money from the summer of 2010, how does he, you know

1 -- so I'm -- and -- and I told you, I have had concerns
2 about that particular issue from the very beginning of
3 this case. So just letting you know.

4 MS. SINNOTT: And I understand that. One of
5 the -- one thing that we put on today, though, was that
6 his hold was not effective until October 20th, which was
7 well after the term started, and well after he
8 registered. So he could have dropped online. And he's
9 claimed that he -- he tried to before he left for Haiti,
10 but he says he can't remember one way or another. And we
11 have evidence in the record, through the testimony of Ms.
12 Looney, that the hold was not there until October 20th.

13 THE COURT: Okay.

14 MS. SINNOTT: So I think he could have dropped,
15 he just chose not to.

16 But I appreciate that, and I understand that is
17 an issue for you.

18 And then the -- the third thing I want to
19 address just very quickly is that there is a case, *In re*
20 *Barth*, 86 BR 146, and it's a case where a father co-
21 signed on an educational loan and the father was the
22 debtor. Father argued that he received no educational
23 benefit or no benefit at all from the loan. And the
24 Court said that was not dispositive, because it looked at
25 what the purpose of the loan was. So, I just want to

1 make sure that's on the record.

2 And I have nothing further to add.

3 THE COURT: Okay.

4 MS. SINNOTT: Enjoy your trip.

5 MR. JONES: If I can, I guess, follow up with
6 one more.

7 I -- I think, again, if we -- if we look at
8 those cases, and I -- and I agree that the last time I
9 read the District Court, and I think Judge King's opinion
10 in *McKay*, he did discuss the educational benefit. The
11 Ninth Circuit did not pick up on any of that in its
12 decision, I think for a reason.

13 And I think the -- the case that opposing
14 counsel's referring to, again, is -- it's a different
15 thing, we're not talking about educational benefit.

16 If there was an agreement here, and he would
17 have benefitted in any way, like any actual benefit by
18 going to the classes, then yeah, it was for an
19 educational benefit, it was at a university. Even if he
20 would have used any of the funds for -- for tuition,
21 books or anything else. I -- I don't think that the
22 issue here is educational benefit.

23 Opposing counsel keeps repeating essentially a
24 predetermined sentence, right? That -- that it's an edu
25 -- it's an educational loan because the purpose of it was

1 -- the -- the distinction here is whether it's a loan in
2 the first place. Right? And the purpose of it, I -- I
3 think is really not important, not what we're arguing.

4 If there was an agreement, and if he had
5 actually received any benefit, surely it was for an
6 educational purpose. It's just whether it's a loan. And
7 -- and I think you need that actual benefit, I think it's
8 clear as to why you need that actual benefit. And I
9 think the case law is quite clear in each of those cases,
10 the Court made those findings for a reason, that there
11 was an actual benefit received, and that's what -- that
12 made that necessary element to -- to call it a loan.

13 THE COURT: And there's no case out there about
14 where someone who didn't matriculate, right?

15 MS. SINNOTT: I have not found a case.

16 MR. JONES: Not that I've -- not that we've
17 found.

18 THE COURT: That's unfortunate.

19 MS. SINNOTT: Yeah, that would be helpful.

20 MR. JONES: So -- so in one way, you may be the
21 only judge to either decide that a student that received
22 arguably no benefit whatsoever, it was still a
23 nondischargeable loan, or the first to decide that, in
24 this case, unlike those other cases, where there was no
25 actual benefit, that it's not a loan.

1 THE COURT: Was there anything left -- and
2 maybe I can tell this from the record, but was there
3 anything left owing from the summer 2010 loan?

4 MS. SINNOTT: Yes.

5 MR. JONES: Yes.

6 THE COURT: Which clearly was a loan, right?

7 MR. JONES: Well, I -- I don't want to get into
8 semantics of now that I don't understand where -- where
9 the agreement even comes from from the 2009, but you
10 know, outside -- outside that --

11 THE COURT: He went to classes --

12 MR. JONES: -- you know, he got a benefit.

13 THE COURT: -- in the summer of 2000 --

14 MR. JONES: Yeah. Yes.

15 THE COURT: -- that we're -- we're only talking
16 about the fall classes of 2010, right?

17 MR. JONES: In terms of the actual benefit,
18 yes.

19 THE COURT: Not the summer.

20 MR. JONES: Yes.

21 THE COURT: Right? So, and there was still
22 something left over from that, right?

23 MR. JONES: Yeah, a couple hundred dollars,
24 assuming there was --

25 MS. SINNOTT: Yes.

1 MR. JONES: Yeah, but I mean, it does
2 presuppose that, assuming there was the first element
3 where there was an agreement to pay that 2009 debt. But
4 outside of that, if we're talking about actual benefit, I
5 agree, there was --

6 THE COURT: He went to class.

7 MR. JONES: -- there was benefit for the \$200
8 or whatever it was from the term before.

9 THE COURT: And -- okay. I think I'm good. I
10 will get you a decision as quickly as I can. I do not
11 like to keep things under advisement. Right? Thank you
12 very much.

13 MS. SINNOTT: Thank you.

14 MR. JONES: Thank you, Judge.

15 MR. FULLER: Thank you, Judge.

16 (Adjourned)

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DECLARATION OF TRANSCRIBER

I, Robyn M. Anderson, hereby certify that:

a. I am an Official Transcriber for the State of Oregon;

b. that I personally transcribed the electronic recording of the proceedings had at the time and place herein before set forth;

c. that the foregoing transcript totaling 147 pages of audio transcription, including cover pages and index, represent an accurate and complete transcription of the entire record of the proceedings, as requested, to the best of my belief and ability.

WITNESS my hand at Gresham, Oregon this 10th day of November, 2016.



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